

Corrections

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This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. TM-91-01]

Nominations for Members of the National Organic Standards Board

Correction

In notice document 91-8881 appearing on page 15323 in the issue of Tuesday, April 16, 1991, the file line at the end of the document was omitted and should have appeared as follows:

[FR Doc. 91-8881 Filed 4-15-91; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Request for Nominations for Voting Members

Correction

In notice document 91-9602 beginning on page 18823 in the issue of Wednesday, April 24, 1991, in the third column, under **FOR FURTHER INFORMATION CONTACT:**, in the last line "5693" should read "6593".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Meeting of National Cancer Advisory Board, Subcommittee on Information and Cancer Control for the Year 2000

Correction

In notice document 91-8992 beginning on page 15627 in the issue of Wednesday, April 17, 1991, the file line

was left off, make the following correction:

On page 15627, the file line at the end of the document was omitted and should have appeared as follows:

[FR Doc. 91-8992 Filed 4-16-91; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 206

[Docket No. R-91-1508; FR-2933-F-01]

Elimination of Reservations of Insurance Authority Home Equity Conversion Mortgage Insurance Program

Correction

In rule document 91-9125 beginning on page 16002 in the issue of Friday, April 19, 1991, make the following correction:

§ 206.15 [Corrected]

On page 16003, in the third column, in § 206.15, in the first line, paragraph designation "(1)" should read "(a)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB32

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Northern Spotted Owl

Correction

In proposed rule document 91-10263 beginning on page 20816 in the issue of Monday, May 6, 1991, make the following correction:

On page 20822, in the second column, in the tenth line from the bottom, "May 31" should read "June 5".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 541

Computer-Related Occupations; Exemptions From Minimum Wage and Overtime Compensation Requirements of the Fair Labor Standards Act

Correction

In the issue of Tuesday, March 5, 1991, on page 9252, in the first column, in the correction of rule document 91-4704, the page number "5250" and "5251" should read "8250" and "8251" throughout the document.

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150-AA90

Access Authorization Program for Nuclear Power Plants

Correction

In rule document 91-9479 beginning on page 18997 in the issue of Thursday, April 25, 1991, make the following correction:

§ 73.56 [Corrected]

On page 19007, in the first column, in § 73.56(a)(2), in the seventh line, "which" should read "whichever".

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AF20

Accrued Benefits

Correction

In rule document 91-9622 beginning on page 18732 in the issue of Wednesday, April 24, 1991, make the following correction:

On page 18733, in the first column, in amendatory instruction 1, in the second line, "amended" should read "revised".

BILLING CODE 1505-01-D

Federal Register

Wednesday
May 29, 1991

Part II

Environmental Protection Agency

40 CFR Parts 80 and 86

**Regulation of Fuels and Fuel Additives:
Standards for Gasoline Volatility and
Particulate Emissions From Urban Buses;
Notice of Proposed Rulemaking**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80 and 86

[AMS-FRL-3957-1]

RIN 2060-AD37

Regulation of Fuels and Fuel Additives: Standards for Gasoline Volatility; and Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Standards for Particulate Emissions From Urban Buses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the following regulatory requirements as mandated by the Clean Air Act Amendments of 1990 (CAA): (a) A particulate emission standard of 0.25 gram per brake horsepower-hour (g/BHP-hr) for 1991 and 1992 model year urban buses and accompanying required changes to the urban bus noncompliance penalties, and (b) modification of existing regulations restricting the volatility of summertime gasoline. EPA proposes to revise the maximum allowable Reid Vapor Pressure (RVP) for gasoline from 7.8 to 9.0 pounds per square inch (psi) in those areas which are designated as unclassifiable or in attainment with the National Ambient Air Quality Standard (NAAQS) for ozone. The state-by-state RVP standards in EPA's current regulations, scheduled to take effect in the summer of 1992 (55 FR 23658, June 11, 1990), are proposed to be revised such that RVP limits below 9.0 psi will go into effect for nonattainment areas only. Both the urban bus and gasoline volatility provisions are proposed to conform current EPA regulations with the requirements of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990.

DATES: EPA will conduct a public hearing on this Notice of Proposed Rulemaking on June 17, 1991. Comments on this proposal will be accepted until July 17, 1991. Additional information on the public hearing and the submission of comments can be found under "Public Participation" in the Supplementary Information section of today's notice.

ADDRESSES: The public hearing will be held at EPA's Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, MI. The public hearing will begin at 10 a.m. and will continue until such time as all testimony has been presented. The hearing will be recorded and a transcript of the hearing will be

placed in the Public Docket. Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A-91-06 at the address given below.

Materials relevant to this proposed rulemaking are contained in Public Docket No. A-91-06. Public Docket No. A-85-21, established in support of the previous volatility rulemakings, Public Docket No. A-84-07, established in support of the previous heavy-duty exhaust standards, and Public Docket No. EN-87-02, established in support of the previous heavy-duty noncompliance penalty rulemaking also contain considerable background information. Each of these dockets is referenced in Public Docket No. A-91-06. These dockets are located in Room M-1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The dockets may be inspected from 8 a.m. until 12 noon and from 1:30 p.m. until 3 p.m., Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Joanne I. Goldhand, U.S. EPA (SDSB-12), Emission Control Technology Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668-4504.

SUPPLEMENTARY INFORMATION:

I. Background

This section presents a brief overview of the background information pertinent to this action. It describes the 0.10 g/BHP-hr urban bus standard (40 CFR 86.091) and the gasoline volatility regulations (40 CFR 80.27 *et seq.*). It also describes the amendments to the CAA that required the changes to those regulations proposed today. Finally, this section summarizes two petitions to which EPA, by this notice, is responding in light of the changes required by the new CAA. The proposals summarized are as follows: One received by EPA on February 16, 1989 from the American Public Transit Association requesting a three-year delay (from 1991 to 1994) in the particulate emission standard for urban buses; and one received on August 8, 1990 from the National Council of Farmer Cooperatives requesting that the sub-9.0 psi RVP controls not be applicable in attainment areas.

A. Regulatory History

1. Urban Bus Particulate Matter Emissions Standards.

On March 15, 1985 (50 FR 10606), EPA promulgated regulations which included emissions standards for particulate matter from urban buses. In the case of

particulate emissions from heavy-duty diesel engines, EPA specified standards of: (a) 0.60 g/BHP-hr applicable to all heavy-duty diesel engines (HDDEs) effective with the 1988 model year, (b) 0.10 g/BHP-hr for HDDEs used in urban buses and 0.25 g/BHP-hr for all other HDDEs effective with the 1991 model year, and (c) 0.10 g/BHP-hr for all HDDEs effective with the 1994 model year.

In the final rule establishing emission standards for methanol-fueled vehicles and engines (54 FR 14426), EPA expanded the scope of the gasoline-fueled and diesel-fueled standards to include methanol-fueled engines operating on the Otto and Diesel engine-cycles. The particulate emission standards established in that rulemaking for methanol-fueled diesel-cycle heavy-duty engines were the same as those described above.

2. EPA Gasoline Volatility Program.

As part of a final rule published March 22, 1989 (54 FR 11868), EPA established maximum volatility levels for gasoline sold during the summertime beginning in 1989 (Phase I). EPA later promulgated a second phase of more stringent volatility controls on June 11, 1990 (55 FR 23658) (Phase II) which is scheduled to take effect in the summer of 1992. The second phase of volatility controls set monthly RVP requirements for each state based upon many factors including, for example, its meteorological conditions. Generally, under Phase II the maximum allowable RVP of gasoline sold in northern states was set at 9.0 psi and the maximum allowable RVP of gasoline sold in southern states was set at 7.8 psi. Both the Phase I and Phase II regulations set a control period of May 1 through September 15 applicable to refiners, importers, distributors, resellers, carriers, and ethanol blenders. For retailers and wholesale purchaser-consumers, however, the RVP controls apply from June 1 through September 15.

The Phase I and Phase II regulations also contained a one psi increase in the maximum allowable RVP for fuel which contained between 9 and 10 percent ethanol and met other specified conditions. Finally, the regulations contained enforcement provisions including provisions establishing liability, and defenses to such liability, for violations of the standards.

B. Clean Air Act Amendments of 1990

Pursuant to the Clean Air Act Amendments of 1990,¹ Congress

¹ Pub. L. No. 101-549, enacted November 15, 1990.

amended the Clean Air Act to include specific language pertaining to urban bus particulate emissions and gasoline volatility. Section 202(f) ² specifies a particulate standard of 0.25 g/BHP-hr for 1991 and 1992 model year buses. That section also requires a particulate standard of 0.10 g/BHP-hr for all 1993 and later model year buses. Since the 0.10 g/BHP-hr particulate standard is currently required for model year 1991 and later urban buses under 40 CFR 86.041, this section mandated a 2 year delay of the current standard for urban buses. Section 219 of the CAA contains standards for later model year urban buses. Today's proposal deals only with the two year delay requirement of the Act for urban buses; the nature of the 1993 bus standard and the 1994 urban bus standard are not relevant issues to this rulemaking. The delay is being handled separately in order to expedite completion of today's proposal, which directly impacts 1991 urban buses.

Section 211(h) of the CAA requires that EPA promulgate regulations establishing a maximum RVP of 9.0 psi for gasoline introduced into commerce during the high ozone season. This standard is to apply in the 48 contiguous States and the District of Columbia beginning in the summer of 1992. It further provides that EPA shall promulgate a more stringent RVP limit for ozone nonattainment areas if EPA finds such a standard is necessary to achieve comparable evaporative emissions reductions, on a per vehicle basis, in such areas. EPA may not make it unlawful to market sub-9.0 psi RVP gasoline in ozone attainment areas, except those previously designated as ozone nonattainment areas. The current Phase II regulations set the maximum allowable RVP of gasoline on a state-wide basis, and set the volatility of gasoline in many southern states at 7.8 psi. Thus, the regulations prohibit, in certain attainment areas, the sale of gasoline with an RVP of 9.0 psi. Today's proposal would raise the RVP limit to 9.0 psi in all attainment areas where it is not currently set at that level. The CAA specifies that regulations implementing the legislative requirements for RVP are to be effective no later than the 1992 high ozone season. The CAA also provides a one psi allowance for certain ethanol blends and creates a defense of liability for exceeding that standard for

ethanol blenders, distributors, marketers, resellers, carriers, retailers or wholesale purchaser-consumers.

C. Petitions

As noted earlier in this preamble, EPA has received petitions for regulatory changes in the same two areas covered by today's proposal. The American Public Transit Association (APTA) petition requested that the 0.10 g/BHP-hr standard for urban buses be delayed to coincide with implementation of the standard for all other HDDEs (i.e., 1994). The main points made by APTA in support of its petition were: (a) That complying diesel-fueled buses would not be available in 1991, (b) that even if complying alternative-fueled buses were available in 1991, costs would be prohibitive due to the need for the construction of fueling facilities and because of reduced fuel economy and perhaps durability of alternative-fueled engines, and (c) that only very small, or perhaps even negative, environmental benefits would result from retaining the 0.10 g/BHP-hr standard for urban buses in 1991.

The National Council of Farmer Cooperatives (NCFC) petition requested that the RVP controls promulgated in the second phase of volatility controls be revised upward to 9.0 psi for all ozone attainment areas. The main argument made in favor of this change was that producing 7.8 psi gasoline for attainment areas was not cost-effective for producers or consumers. They also argued that such a broadly enforced requirement might create pressure on the pipelines to require 7.8 psi fuel nationwide which they claimed EPA itself did not believe would be cost-effective.

Before EPA was able to take final action on either the APTA or NCFC petition, the issues raised therein were taken up by Congress as part of the debates regarding amendments to the Clean Air Act. During the course of those debates, and presumably in response to them, APTA itself changed aspects of its position. EPA believes that Congress in its deliberations fully considered the issues raised by APTA and NCFC. Congress enacted specific measures regarding the particulate standard for urban buses and gasoline RVP control in attainment areas and EPA believes implementing the changes directed by Congress is a satisfactory resolution of the concerns raised by APTA and NCFC. For this reason EPA plans no action beyond this rulemaking in response to either of these petitions.

II. Content of the Proposal

A. Urban Bus Particulate Matter Emissions Standards

Today's notice proposes a particulate emission standard of 0.25 g/BHP-hr for all 1991 and 1992 model year heavy-duty diesel engines used in urban buses. The 0.10 g/BHP-hr particulate emissions standard for heavy-duty diesel engines used in urban buses currently in place is being delayed until model year 1993. The standard will be implemented in the same manner as previous heavy-duty standards, including without limitation the averaging, trading and banking program under 40 CFR Parts 86.091-15 and 86.094-15, and the heavy-duty exhaust test procedures under 40 CFR Subpart D. EPA believes that this is consistent with the CAA.

The delay of the 0.10 g/BHP-hr particulate standard from the 1991 to the 1993 model year affects the petroleum-fueled urban bus particulate non-compliance penalty (NCP) promulgated under the NCP III Final Rule (55 FR 46622, November 5, 1990; 40 CFR 86.1105-87). EPA proposes that the NCPs and NCP parameters applicable to 1991 and future model year petroleum-fueled heavy-duty diesel engines not used in urban buses shall now be applied to model year 1991 and 1992 heavy-duty engines used in urban buses. This is appropriate since, due to the proposed changes, particulate emission requirements are now the same for both categories. It also conforms to historical NCP practices since urban buses and other heavy-duty engines had been treated the same for NCPs until the standards for the engines were set at different levels.

A revised NCP is also being proposed for the 1993 petroleum-fueled urban bus particulate standard at this time. Even though the 0.10 g/BHP-hr standard is unchanged, EPA believes that the new circumstances require that the upper limit for NCP availability and the values of the NCP parameters be revised because of the delay. The upper limit for NCP availability is intended to be set at the previous standard for that class of engines. At the time of the Phase III rulemaking, the previous PM standard for urban bus engines was the 1988 heavy-duty PM standard of 0.60 g/BHP-hr, and the upper limit was therefore set at 0.60 g/BHP-hr. Since the standard previous to the 1993 urban bus PM standard is the 1991 heavy-duty diesel PM standard of 0.25 g/BHP-hr, the upper limit is proposed to be changed from 0.60 to 0.25 g/BHP-hr.

Additionally, the fact that the previous PM standard is now 0.25 and

² Section 207(b) of the Clean Air Act Amendments of 1990 amends section 202 by adding a new section 202(f). However, the current section 202(f) in the CAA was not omitted by the amendments. Section 202(f) will be used in this NPRM to refer solely to the new subsection added by section 207(b) of the amendments.

not 0.60 g/BHP-hr affects the values of the NCP parameters. During the NCP Phase III rulemaking, the average incremental cost of compliance (COC₉₀) and the ninetieth percentile incremental cost of compliance (COC₉₀) were based on the average and high cost for urban bus manufacturers to lower the PM emissions of their engines from 0.60 to 0.10 g/BHP-hr. Since urban bus manufacturers must now lower emissions from 0.25 to 0.10 g/BHP-hr the cost estimates are proposed to be changed to reflect the different reduction in emissions. During the NCP Phase III rulemaking, the petroleum-fueled urban bus PM NCPs were technologically based on an urban bus manufacturer reducing engine-out emissions from 0.60 to 0.25 g/BHP-hr through the use of engine modifications and then lowering emissions from 0.25 to 0.10 g/BHP-hr through the use of trap technology (see Docket EN-87-02, Item III-B-1, page 4). During the NCP Phase III rulemaking, the cost of adding a trap to an average petroleum-fueled urban bus engine was estimated to be \$4,020 and the cost of adding a trap to a high cost petroleum-fueled urban bus engine was estimated to be \$4,535 (see Docket EN-87-02, Item IV-B-1, pages 4 to 8). Trap technology remains a likely candidate for technology to meet the new standard, therefore, EPA is proposing to continue basing the urban bus NCP on the use of traps. EPA also proposes to use the same trap cost estimates developed during the NCP Phase III rulemaking since no better estimates are available.

Therefore, COC₉₀ and COC₉₀ are proposed to be changed to \$4,020 and \$4,535, respectively. The average marginal cost of compliance in dollars per emission unit reduction (MC₉₀) is proposed to remain \$22,971 per g/BHP-hr because the marginal cost of adding the least cost effective piece of hardware is still the marginal cost of adding a trap. Since trap technology is still being used as the benchmark for these calculations, the factor used to calculate the ninetieth percentile marginal cost of control from the average marginal cost of control (F) will remain 1.2. The factor used to determine the engineering and development component of the NCP for refund purposes is proposed to be changed to 0.02 to reflect the portion of the new COC₉₀ which is attributed to fixed costs.

B. EPA Gasoline Volatility Program

1. Standards

EPA researched the environmental need for volatility controls as part of the Phase II rulemaking completed in June,

1990. As detailed in that analysis, EPA demonstrated that certain areas need lower RVP gasoline to achieve vehicle evaporative emissions comparable to those achieved using 9.0 psi fuel in other, cooler, parts of the nation. The areas which require sub-9.0 psi fuel are those in which high temperatures combine with high volatility gasoline in vehicle fuel tanks to create substantially higher per vehicle volatile organic compound emissions.

The CAA, however, has limited EPA's authority to set gasoline volatility levels below 9.0 psi. EPA may set such an RVP standard only for ozone nonattainment areas and former ozone nonattainment areas. For nonattainment areas, EPA is required to establish an RVP standard more stringent than 9.0 psi as EPA finds "necessary to generally achieve comparable evaporative emissions (on a per vehicle basis) in nonattainment areas, taking into consideration the enforceability of such standards, the need of an area for emission control, and economic factors." (Section 211(h)(1)) EPA reviewed all of these issues in promulgating the Phase I and Phase II volatility controls. The determinations made therein regarding per vehicle emissions and need for attainment are still valid under the new scheme. The total compliance costs are lower under the new scheme than under the current regulatory program and enforcement, while changed, is not made substantially more difficult.

Based on that information, EPA now believes the regulations promulgated previously conform to the new statute except with respect to warmer attainment areas. Thus, the only change to the volatility standards proposed in this rule is the elimination of federal sub-9.0 psi requirements for those areas where EPA no longer has the authority to adopt such levels. More specifically, EPA proposes that the RVP limit for gasoline be 9.0 psi in all areas not designated ozone nonattainment after publication of the redesignations required by section 107(d)(4)(A)(ii) of the Clean Air Act³ (that is, in all areas

³ Under section 107(d)(4) each Governor must, within 120 days of enactment of the Clean Air Act Amendments of 1990, submit a list to EPA that designates the status of all areas of the state as either attainment, nonattainment, or unclassifiable, with respect to the NAAQS for ozone. Within 120 days after that date, EPA must promulgate such designations, making any appropriate modifications. By July 15, 1991 there will therefore be a complete, current designation of the attainment status of all areas covered by the RVP regulations. EPA does not expect that section 107(d)(4)(A)(ii) will result in a substantial change in the number or identity of areas designated as nonattainment. Most, if not all, areas currently designated as nonattainment are expected to continue in that status, with the expected addition of several new areas.

designated attainment or unclassifiable for ozone after such rulemaking). (Designations are codified in volume 40 of the Code of Federal Regulations (CFR) Part 81.)

The federal RVP limit for gasoline sold in areas designated ozone nonattainment pursuant to such designation shall remain at the level determined in the second phase of volatility controls for states containing nonattainment areas. This means that sub-9.0 psi RVP gasoline will be required only in areas which are currently designated nonattainment for ozone (or those designated nonattainment in the upcoming rulemaking, as noted above) and which are in states with a 7.8 psi RVP standard pursuant to the Phase II final rule (55 FR 23659, June 11, 1990).

New section 211(h) provides EPA with the authority to set an RVP limit of less than 9.0 psi for former nonattainment areas that have been redesignated attainment under the Clean Air Act, that the area is capable of maintaining areas. In order for a nonattainment area to be so redesignated, revised section 107(d)(3) of the CAA requires the state to make a showing, pursuant to Section 175A of attainment for 10 years. Since such a showing may well include continuation of the RVP control program, EPA believes that it is appropriate to consider whether to continue volatility control below 9.0 psi at such time. Whenever an attainment area becomes a designated ozone nonattainment area after the Section 107(d) redesignations described above, the 9.0 psi RVP limit shall remain in effect unless EPA promulgates a lower RVP standard in a separate rulemaking.

As stated in the preamble for the Phase II volatility controls (55 FR 23660, June 11, 1990), EPA will rely on states to initiate changes to the EPA program which they believe will enhance local air quality and/or increase the economic efficiency of the program, within the statutory limits. The process, as described in that rulemaking, would be generally as follows. If states desire the EPA program to be adjusted to respond to localized issues, one or two options are available, depending on the nature of the change. For cases where a state desires to increase the stringency of the standard in a nonattainment area, CAA section 211(c)(4) provides a mechanism for states to adopt such a state program as a revision to their State Implementation Plan (SIP) for ozone.

It is also possible that a state may identify the existence of localized impacts for which it may be appropriate to make minor changes in the EPA

program to be more or less stringent in some month or months. In such a case, a state may petition the Administrator to amend the applicable standard for an area, within the statutory constraints. If EPA determines to revise its regulations, such changes will be made through a rulemaking process. Because of the broad potential effects and diversity of interested parties in matters related to RVP control, a state should make any request to EPA for revised standards through the governor (or the governor's designee). In such a request, EPA would look for documentation of the local economic impact and, in the case of a request for a less stringent standard, for an indication that sufficient alternative programs are available to achieve attainment and maintenance of the ozone NAAQS.

2. Ethanol Blends

EPA's current regulations provide that certain blends of gasoline and ethanol violate the RVP standard only if their volatility exceeds the applicable standard by more than one psi. 40 CFR 80.27(d) (1), (2), and (3). To qualify for this 1 psi allowance, an ethanol blend has to meet certain conditions—the blend has to contain between 9 and 10 percent ethanol (by volume), the maximum ethanol content cannot exceed any applicable waiver condition under section 211(f)(4) of the CAA, and the ethanol blend must be marketed in accordance with certain specified requirements. These requirements are that retail pumps dispensing the blend be labeled as to alcohol content, and that invoices, loading tickets, and similar documents which accompany the blend must contain a statement that the gasoline being shipped contains ethanol. These documents must be retained for at least one year, and are subject to inspection by the Agency.

Section 211(h)(4) of the CAA establishes a one psi RVP allowance for fuel blends containing gasoline and 10 percent denatured anhydrous ethanol. EPA proposes to revise its regulations to include use of denatured and anhydrous ethanol as a specific condition for the one psi allowance. However, EPA is not proposing any change to the current requirement that the blend contain between 9 and 10 percent ethanol (by volume) to obtain the one psi allowance. EPA believes this is consistent with Congressional intent.

First, the legislative history indicates that Congress envisioned continuation of the 9 to 10 percent requirement. Section 216 of the Clean Air Act Amendments as passed by the House of

Representatives⁴ also established a one psi allowance for blends of gasoline and ethanol which contained "at least 10 percent ethanol." In discussing this requirement, the House Committee on Energy and Commerce stated that EPA "regulations shall permit gasoline containing at least 9 but not more than 10 percent ethanol (by volume) to exceed the volatility requirements by up to 1.0 pounds per square inch."⁵ There is no indication that Congress intended a different result through the language finally adopted.

In addition, interpreting this provision to provide a one psi allowance only if the blend contains exactly 10 percent ethanol would place a next to impossible burden on ethanol blenders. Compliance with the conditions of a fuel waiver under section 211(f)(4) of the CAA requires that the ethanol portion of the gasoline blend cannot lawfully be any greater than 10 percent (by volume). Congress was clearly aware of such waiver conditions, as they are referenced in section 211(h). The nature of the blending process itself (including filling procedures and the use of denaturing additives), further complicates a requirement that the ethanol portion of the blend be exactly 10 percent ethanol. EPA believes that Congress did not intend to require, as a condition to the one psi allowance, that blenders have absolutely no margin of safety for lawful compliance with section 211(f)(4) waiver conditions, given the practical difficulties involved in the blending process. Therefore, EPA is not proposing any changes to its current requirement that ethanol blends contain between 9 and 10 percent ethanol.

Finally, a new defense against liability for violation of the ethanol blend RVP requirements is included in this package as required by the CAA. This defense is for a distributor, blender, marketer, reseller, carrier, retailer, or wholesale purchaser-consumer who can demonstrate that the gasoline portion of an ethanol blend meets the applicable RVP standard, that the ethanol does not exceed its waiver condition under section 211(f)(4), and that no additional alcohol or other additive has been added to increase the volatility of the ethanol portion of the blend. This defense will provide protection from liability if the volatility of an ethanol blend exceeds the exemption standard when all requirements of the statute have been met. EPA believes that this

statutorily mandated defense is in addition to and does not supersede any of the defenses currently contained in the regulations.

In accordance with the statutory language, EPA proposes that a party may demonstrate the elements of the new defense by production of a certification from the facility from which the gasoline was received. EPA believes the defense established in section 211(h)(4) is limited to ethanol blends which meet the 9 to 10 percent requirement in the regulations. Thus a certificate which otherwise meets the requirements of the regulations does not establish a defense for gasoline containing ethanol outside these percentages.

EPA is not proposing a requirement that upstream parties produce such certificates to downstream parties, and believes this is consistent with the holding in *National Tank Truck Carriers v. EPA*, 907 F.2d 177 (D.C. Cir. 1990). In that case the court invalidated one element of a defense which required the production of certain documentation when the upstream parties were not required to produce such documentation to the carriers. The regulation before the court in *National Tank* was not based on a statutory defense, and was the only defense available to the carrier. Here the defense is based on specific statutory terms which do not on their face require upstream parties to produce such certificates. In addition, the statutory defense is not the only defense available to violators. As previously discussed, all the defenses currently in EPA's regulations are still available and are not superseded by section 211(h)(4). EPA therefore believes that the proposed defense based on a certificate does not in any way run counter to the court's holding in *National Tank*.

Today's proposal specifies when a certification will be considered acceptable to the Administrator for purposes of establishing the statutory defense. The language used in section 211(h)(4) indicates Congress meant to provide discretion for the Administrator to determine what evidence, including certifications, would be acceptable in establishing this defense. There is also no indication Congress meant to insulate persons from liability based solely on a paper certification which only repeats the words of the statute. EPA has therefore tried to define those reasonable circumstances when the regulated community can properly rely on a certification, thus providing a reasonable defense as envisioned by Congress.

⁴ S.1630, as passed by the House of Representatives on May 23, 1990.

⁵ H.R. Rep. No. 101-490, 101st Cong., 2d Sess. 312 (1990).

Under today's proposal the certifications will have to contain the information called for in the statute, and must have been supplied by the facility from which the gasoline was received. For retailers or wholesale purchaser-consumers, a defense based on certifications will be accepted only if all the gasoline found in the storage tank which is in violation at the facility when a violation is detected is covered by such certifications. For distributors, ethanol blenders, resellers and carriers alleged to be in violation, a certification will be accepted as a defense to such violation only if it is supported by evidence of an ongoing program to verify the accuracy of such certifications, such as a periodic sampling and testing program conducted by such person or on the facility's behalf. In addition, no certification will be accepted if the party at whose facility the violation is detected has reason to believe the certification is not accurate.

In effect, production of an acceptable certification or certifications replaces one element of a defense under EPA's current regulations, the requirement that a party prove he or she did not cause the violation. A party, however, is not limited to providing such certification to meet the statutory defense. The party may also demonstrate the statutory defense elements by other evidence acceptable to the Administrator, as provided in the statute. EPA would evaluate such other evidence on a case by case basis to determine whether it is sufficient to establish that the defense elements have been met.

EPA is also proposing to delete the current pump labeling and document statement conditions to the one psi allowance for ethanol blends under § 80.27(d)(3). EPA believes that these additional requirements are not appropriate under the statute, which specifically provides that the one psi allowance applies to blends containing 10% denatured anhydrous ethanol, without further conditions. However, EPA proposes to add a new § 80.27(d)(3), requiring marketing documents to contain a statement regarding the ethanol content of the gasoline; and a new § 80.27(d)(4), requiring pump labeling. These requirements would not be conditions of the waiver; rather, they are independent requirements for the purpose of facilitating EPA's sampling and testing process and ensuring that ethanol products are not mixed with other products resulting in high RVP gasoline.

3. Regulatory Control Period and Regulated Parties

EPA is not proposing any structural changes to the enforcement periods or timing contained in the regulations. For the earlier volatility rulemaking, EPA studied in detail the timing of high ozone conditions, the nature of gasoline distribution systems and the best procedure for ozone control given these parameters.

The statute requires that marketers and blenders be included as regulated parties. EPA believes that under the existing regulations they are already treated as regulated parties.

Finally, the statute prohibits the introduction into commerce of high RVP gasoline by "any person" during the high ozone season. EPA's current regulations cover a wide variety of persons involved in the production, distribution, and sale of gasoline, but are limited to these designated parties. Current regulations do not include, for example, the typical retail purchaser of gasoline. New section 211(h) is therefore broader in scope than EPA's current regulations. To conform to the statute, EPA proposes to expand the group of regulated parties during the high ozone season to include any person.

The regulatory control period will stay as under Phase II volatility control: May 1 through September 15. Additionally, as under the Phase II program "[e]nforcement is delayed until June 1 at the beginning of the control season for end-users [retail outlets, wholesale purchaser-consumer and other consumers] to prevent outlets with slower turnover from needing advance supplies of RVP controlled gasoline from suppliers over which they often have little control" (June 11, 1990; 55 FR 23659). Thus the "high ozone season" statutory prohibitions on all persons apply June 1 to September 15 but EPA has retained control over suppliers from May 1 through June 1. EPA believes that this regulatory scheme best ensures the gasoline is available when needed without unnecessary burdens on small retailers.

III. Environmental Impact

A. Urban Bus Particulate Matter Emission Standard

For the two years, 1991 and 1992, during which new urban buses purchased and placed in service will be required to comply with a particulate emission standard of 0.25 g/BHP-hr rather than 0.10 g/BHP-hr, the increase in national urban diesel particulate emissions was estimated, based upon the Regulatory Impact Analysis prepared for the earlier rulemaking, to

be no more than 70 tons in 1991 and 140 tons in 1992. Relative to the total urban diesel particulate inventory of approximately 70,000 tons, the overall effect will be small.

B. EPA Gasoline Volatility Program

The proposed changes in the volatility regulations are not expected to have a detrimental effect on the health of those living in the areas affected. The areas affected by the changes proposed today are already in attainment of the ozone standard without the benefit of sub-9.0 psi RVP fuel. Additionally, 9.0 psi gasoline itself has a lower volatility than gasoline at previous uncontrolled volatility levels.

IV. Economic Impact

A. Urban Bus Particulate Matter Emission Standard

Changes in bus particulate emissions standards contained in this action could impact new vehicle price and perhaps vehicle operating costs due to changes in fuel economy and maintenance requirements. The relaxed standard will permit lower costs for the bus engine manufacturers in model years 1991 and 1992. Although it was earlier assumed that trap oxidizers would be used to meet the 0.10 g/BHP-hr, it is currently unclear what technology would have been used to meet the standard in 1991. It is therefore also unclear exactly how much savings will be realized due to this proposed change. However, for a trap-equipped bus, the savings could exceed several thousand dollars per bus.

B. EPA Gasoline Volatility Program

EPA believes that the economic effects of the proposed changes in the volatility regulations will be small. As fully discussed in the rulemaking for the Phase II volatility controls, it may be more economical for large refineries to market gasoline with only one RVP in a limited geographical area. This reduced cost derives from the simplification which results from only having to produce, store and distribute one type of product. Therefore, some refiners may continue to make 7.8 psi RVP fuel for attainment areas in a given geographic area if 7.8 Psi RVP fuel is required in adjacent nonattainment areas. Those refiners marketing 9.0 psi RVP fuel will realize a cost savings of approximately 1.1 cents per gallon if they no longer have to make 7.8 psi fuel. EPA does not believe any great overall change in refinery operations or costs will occur as a result of this regulation. Any change will be positive for some refiners and should result in lower costs to their consumers.

The modified volatility program will have somewhat improved cost effectiveness. The cost effectiveness analysis performed for the original two volatility rulemakings was aimed at nonattainment areas. Although a slight benefit was included for attainment areas, the great majority of the benefit was in nonattainment areas. This benefit will still be fully experienced under this new scheme. Cost savings in areas with a relaxed standard would more than offset the loss of benefits, resulting in a better overall cost effectiveness.

V. Public Participation

EPA desires full public participation in arriving at its final decisions, and therefore solicits comments on all aspects of this proposal from all interested parties. Wherever applicable, full supporting data and detailed analyses should be submitted to allow EPA to make maximum use of the comments. Commenters are especially encouraged to provide specific suggestions for changes to any aspects of the proposal that they believe need to be modified or improved. All comments should be directed to the EPA Air Docket, Docket No. A-91-06 [see "ADDRESSES"].

Any person desiring to testify at the public hearing [see "DATES"] should notify the contact person listed above at least seven days prior to the day of the hearing. Persons wishing to testify at the hearing should also provide an estimate of the time required for the presentation of the testimony and notification of any need for audio/visual equipment. It is suggested that sufficient copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, a sign-up sheet will be available at the registration table the morning of the hearing for scheduling of the order of testimony.

The official record of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the EPA Air Docket, Docket No. A-91-06 [see "ADDRESSES"].

Commenters desiring to submit proprietary information for

consideration should clearly distinguish such information from other comments to the greatest possible extent, and clearly label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket.

Information covered by such a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

The hearing will be conducted informally, and technical rules of evidence will not apply. Written transcripts of the hearing will be made. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceedings.

VI. Statutory Authority

The statutory authority for the standards proposed today is granted to EPA by sections 202, 206, 211, 114 and 301(a) of the Clean Air Act, as amended.

VII. Administrative Designation and Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. Major regulations have an annual effect on the economy in excess of \$100 million, have a significant adverse impact on competition, investment, employment or innovation, or result in a major price increase. The two elements of this rulemaking package, individually and together, do not constitute major rules according to the established criteria. In fact, as discussed above, the elements of this rulemaking package will reduce the cost of compliance with already existing rules for certain industrial sectors. Therefore, I have determined that this proposal does not constitute a "major" regulation.

This regulation was submitted to the Office of Management and Budget

(OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA response to those comments have been placed in the public docket for this rulemaking.

VIII. Compliance With the Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act, the Administrator is required to certify that a regulation will not have a significant adverse economic impact on a substantial number of small business entities. There will not be a significant impact on a substantial number of small business entities due to the new PM standards since few of the vehicle manufacturers which will be affected by these regulations are small business entities and any effect of this regulation would be beneficial. The changes in the volatility controls may have a significant beneficial impact on some smaller gasoline refiners. For these reasons, I certify that the rules contained in this proposed rule will not have a significant adverse economic impact on a substantial number of small entities.

IX. Reporting and Recordkeeping Requirements

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must obtain OMB clearance for any activity that will involve collecting substantially the same information from 10 or more non-Federal respondents. This proposed rule does not create any new information requirements or contain any new information collection activities.

X. List of Subjects in 40 CFR Parts 80 and 86

Administrative practice and procedures, Air pollution control, Environmental protection, Motor vehicle and motor vehicle engines, Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 21, 1991.

William K. Reilly,
Administrator.

APPENDIX—TABLE OF CHANGES PROPOSED TO BE TO VARIOUS SUBPARTS OF 40 CFR

Section	Change	Reason
1. Part 80 Authority.....	None.....	
2. § 80.2 (cc), (dd) and (ee).....	Add definitions for ethanol, designated attainment area and designated nonattainment area.	Implement CAAA of 1990.
3. § 80.27 (a), (d)(2) and (d)(3).....	Revise paragraphs.....	Change regulatory requirements to conform to CAAA of 1990.

APPENDIX—TABLE OF CHANGES PROPOSED TO BE TO VARIOUS SUBPARTS OF 40 CFR—Continued

Section	Change	Reason
4. § 80.28 (b)(1), (b)(3), (c)(1), (c)(4), (d)(1), (d)(4), (e)(1), (e)(2), (e)(5), (f)(1), (f)(2), (f)(4), and (g)(8).	Revise paragraphs (b)(1), (b)(3), (c)(1), (c)(4), (d)(1), (d)(4), (e)(1), (e)(2), (e)(5), (f)(1), (f)(2), and (f)(4), and add paragraph (g)(8).	Add new defense.
5. Part 86 Authority.	Add references to section 205 and 216.	Correct typographical error.
6. § 86.091-11 (a)(1)(iv)(A) and (a)(1)(iv)(B).	Revise paragraphs.	Omit 1991 urban bus particulate standard of 0.10g/BHP-hr.
7. § 86.093-11.	Add § 86.093-11.	Add 1993 urban bus particulate standard of 0.10g/BHP-hr.
8. § 86.1105-87 (c), (d) and (e).	Revise § 86.1105-87 (c) and (d); add § 86.1105-87(e).	Change NCPs to reflect new standards.

For the reasons set forth in the preamble, parts 80 and 86 of title 40 of the Code of Federal Regulations are amended as follows:

PART 80—REGULATIONS OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301 (a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545 and 7601(a).

2. Section 80.2 is proposed to be amended by adding new paragraphs (cc), (dd) and (ee) to read as follows:

§ 80.2 Definitions

(cc) *Ethanol* means denatured anhydrous ethyl alcohol.

(dd) *Designated Nonattainment Area* means an area designated as being in nonattainment with the National Ambient Air Quality Standard for ozone pursuant to section 107(d)(4)(A)(ii) of the Clean Air Act.

(ee) *Designated Attainment Area* means an area not designated as being in nonattainment with the National Ambient Air Quality Standard for ozone pursuant to section 107(d)(4)(A)(ii) of the Clean Air Act.

3. Section 80.27 is proposed to be amended by revising the non-chart portion of paragraph (a), and all of paragraphs (d)(1) and (d)(3) and by adding paragraph (d)(4) to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

(a)(1) *Prohibited activities in 1991.* During the 1991 regulatory control periods, no refiner, importer, distributor, reseller, carrier, retailer or wholesale purchaser-consumer shall sell, offer for sale, dispense, supply, offer for supply, or transport gasoline whose Reid vapor pressure exceeds the applicable standard. As used in this section and § 80.28, "applicable standard" means the standard listed in this paragraph for the geographical area and time period in which the gasoline is intended to be

dispensed to motor vehicles or, if such area and time period cannot be determined, the standard listed in this paragraph that specifies the lowest Reid vapor pressure for the year in which the gasoline is being sampled. As used in this section and § 80.28, "regulatory control periods" mean June 1 to September 15 for retail outlets and wholesale purchaser-consumers and May 1 to September 15 for all other facilities.

(2) *Prohibited activities in 1992 and beyond.* During the 1992 and later high ozone seasons no person, including without limitation, no retailer or wholesale purchaser-consumer, and during the 1992 and later regulatory control periods, no refiner, importer, distributor, reseller, or carrier shall sell, offer for sale, dispense, supply, offer for supply, transport or introduce into commerce gasoline whose Reid vapor pressure exceeds the applicable standard. As used in this section and § 80.28, "applicable standard" means:

(i) 9.0 psi for all designated attainment areas, and

(ii) The standard listed in this paragraph for the state and time period in which the gasoline is intended to be dispensed to motor vehicles for any designated nonattainment area within such State or, if such area and time period cannot be determined, the standard listed in this paragraph that specifies the lowest Reid vapor pressure for the year in which the gasoline is sampled. Designated attainment and designated nonattainment areas and their exact boundaries are described in 40 CFR part 81, or such part as shall later be designated for that purpose. As used in this section and § 80.28, "high ozone season" means the period from June 1 to September 15 of any calendar year and "regulatory control period" means May 1 to September 15.

(d) * * *

(1) Any gasoline which meets the requirements of paragraph (d)(2) of this section shall not be in violation of this section if its Reid vapor pressure does not exceed the applicable standard in

paragraph (a) of this section by more than one pound per square inch (1.0 psi).

(3) Each invoice, loading ticket, bill of lading, delivery ticket and other document which accompanies a shipment of gasoline containing ethanol shall contain a legible and conspicuous statement that the gasoline being shipped contains ethanol and the percentage concentration of ethanol.

(4) Each gasoline pump stand from which such gasoline is dispensed at a retail outlet or wholesale purchaser-consumer facility shall be affixed with a legible and conspicuous label which states that the gasoline dispensed from the pump contains ethanol and the percentage concentration of ethanol.

4. Section 80.28 is proposed to be amended by revising paragraphs (b)(1), (b)(3), (c)(1), (c)(4), (d)(1), (d)(4), (e)(1), (e)(2), (e)(5), (f)(1), (f)(2), (f)(4), and by adding a new paragraph (g)(8) to read as follows:

§ 80.28 Liability for violations of gasoline volatility controls and prohibitions.

(b) * * *

(1) The carrier, except as provided in paragraph (g)(1) or (g)(8) of this section; and

(3) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (g)(6) or (g)(8) of this section.

(c) * * *

(1) The distributor or reseller, except as provided in paragraph (g)(3) or (g)(8) of this section;

(4) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (g)(6) or (g)(8) of this section.

(d) * * *

(1) The distributor, except as provided in paragraph (g)(3) or (g)(8) of this section;

(4) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (g)(6) or (g)(8) of this section.

(e) * * *

(1) The retailer or wholesale purchaser-consumer, except as provided in paragraph (g)(5) or (g)(8) of this section;

(2) The distributor and/or reseller (if any), except as provided in paragraph (g)(3) or (g)(8) of this section;

(5) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (g)(6) or (g)(8) of this section.

(f) * * *

(1) The retailer or wholesale purchaser-consumer, except as provided in paragraph (g)(5) or (g)(8) of this section;

(2) The distributor (if any), except as provided in paragraph (g)(3) or (g)(8) of this section;

(4) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (g)(6) or (g)(8) of this section.

(g) * * *

(8) In addition to the defenses provided in paragraphs (g)(1) through (g)(6) of this section, in any case in which an ethanol blender, distributor, reseller, carrier, retailer, or wholesale purchaser-consumer would be in violation under paragraph (b), (c), (d), (e) or (f) of this section, as a result of gasoline which contains between 9 and 10 percent ethanol (by volume) but exceeds the applicable standard by more than one pound per square inch (1.0 psi), the ethanol blender, distributor, reseller, carrier, retailer or wholesale purchaser-consumer shall not be deemed in violation if such person can demonstrate, by showing receipt of a certification from the facility from which the gasoline was received or other evidence acceptable to the Administrator, that:

(i) The gasoline portion of the blend complies with the Reid vapor pressure limitations of § 80.27(a); and

(ii) The ethanol portion of the blend does not exceed 10 percent (by volume); and

(iii) No additional alcohol or other additive has been added to increase the

Reid vapor pressure of the ethanol portion of the blend.

In the case of a violation alleged against an ethanol blender, distributor, reseller, or carrier if the demonstration required by paragraphs (g)(8) (i), (ii), and (iii), of this section is made by a certification, it must be supported by evidence that the criteria in paragraphs (g)(8) (i), (ii), and (iii) of this section have been met, such as an oversight program conducted by or on behalf of the ethanol blender, distributor, reseller or carrier alleged to be in violation, which includes periodic sampling and testing of the gasoline or monitoring the volatility and ethanol content of the gasoline. Such certification shall be deemed sufficient evidence of compliance provided it is not contradicted by specific evidence, such as testing results, and provided that the party has no other reasonable basis to believe that the facts stated in the certification are inaccurate. In the case of a violation alleged against a retail outlet or wholesale purchaser-consumer facility, such certification shall be deemed an adequate defense for the retailer or wholesale purchaser-consumer, provided that the retailer or wholesale purchaser-consumer is able to show certificates for all of the gasoline contained in the storage tank found in violation, and, provided that the retailer or wholesale purchaser-consumer has no reasonable basis to believe that the facts stated in the certifications are inaccurate.

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINE: CERTIFICATION AND TEST PROCEDURES

5. The authority citation for part 86 is revised to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, and 301(a), Clean Air Act, as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550 and 7601 (a).

6. Section 86.091-11 of subpart A is proposed to be amended by revising paragraphs (a)(1)(iv)(A) and removing and reserving paragraph (a)(1)(iv)(B) to read as follows:

§ 86.091-11 Emission standards for 1991 and later model year diesel heavy-duty engines.

(a)(1) * * *

(iv) *Particulate* (A) For all diesel engines, including those to be used in urban buses, 0.25 gram per brake horsepower-hour (0.093 gram per megajoule) as measured under transient operating conditions.

(B) [Reserved]

7. A new § 86.093-11 of subpart A is proposed to be added to read as follows:

§ 86.093-11 Emission standards for 1993 and later model year diesel heavy-duty engines.

(a)(1) Exhaust emissions from new 1993 and later model year diesel heavy-duty engines shall not exceed the following:

(i)(A) *Hydrocarbons (for petroleum-fueled diesel engines)*. 1.3 grams per brake horsepower-hour (0.48 gram per megajoule), as measured under transient operating conditions.

(B) *Organic material hydrocarbon equivalent (for methanol-fueled diesel engines)*. 1.3 grams per brake horsepower-hour (0.48 gram per megajoule), as measured under transient operating conditions.

(ii) *Carbon monoxide*. (A) 15.5 grams per brake horsepower-hour (5.77 grams per megajoule), as measured under transient operating conditions.

(B) 0.50 percent of exhaust gas flow at curb idle (methanol-fueled diesel only).

(iii) *Oxides of nitrogen*. (A) 5.0 grams per brake power-hour (1.9 grams per megajoule), as measured under transient operating conditions.

(B) A manufacturer may elect to include any or all of its diesel heavy-duty engine families in any or all of the NO_x averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.091-15. If the manufacturer elects to include engine families in any of the programs, the NO_x FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

(iv) *Particulate*. (A) For diesel engines to be used in urban buses, 0.10 grams per brake horsepower-hour (0.037 gram per megajoule), as measured under transient operating conditions.

(B) For all other diesel engines only, 0.25 grams per brake horsepower-hour (0.093 gram per megajoule), as measured under transient operating conditions.

(C) A manufacturer may elect to include any or all of its diesel heavy-duty engine families in any or all of the particulate averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.094-15. If the manufacturer elects to include engine families in any of these programs, the particulate FEL may not exceed 0.25 gram per brake horsepower-hour (0.093 gram per megajoule) for diesel engines

used in urban buses or 0.60 gram per brake horsepower-hour (0.22 gram per megajoule) for other diesel engines. This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over operating schedules as set forth in paragraph (f)(2) of Appendix I of this part, and measured and calculated in accordance with the procedures set forth in subpart N of this part, except as noted in § 86.091-23(c)(2) (i) and (iii).

(b)(1) The opacity of smoke emission from new 1993 and later model year diesel heavy-duty engines shall not exceed:

- (i) 20 percent during the engine acceleration mode.
- (ii) 15 percent during the engine lugging mode.
- (iii) 50 percent during the peaks in either mode.

(2) The standards set forth in paragraph (b)(1) of this section refer to exhaust smoke emissions generated under the conditions set forth in Subpart I of this part and measured and calculated in accordance with those procedures.

(3) *Evaporative emissions* (total of non-oxygenated hydrocarbons plus methanol) for 1993 and later model year heavy-duty vehicles equipped with methanol-fueled diesel engines shall not exceed:

(i) For vehicles with Gross Vehicle Weight Rating of up to 14,000 lbs., 3.0 grams per test.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000 lbs., 4.0 grams per test.

(4)(i) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 lbs., the standards set forth in paragraph (b)(3) of this section refer to a composite sample of evaporative emission collected under the conditions set forth in Subpart M and measured in accordance with those procedures.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 26,000 lbs., the standard set forth in paragraph (b)(3)(ii) of this section refers to the manufacturers' engineering design evaluation using good engineering practice (a statement of which is required in § 86.091-23(b)(4)(ii)).

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 1993 or later model year methanol-fueled diesel, or any naturally-aspirated diesel heavy-duty engine. For petroleum fueled engines only, this provision does not apply to engines using turbochargers, pumps, blowers or superchargers for air induction.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in subpart I or N of this part to ascertain that such test engines meet the requirements of paragraphs (a), (b), and (c) and (d) of this section.

8. Section 86.1105-87 of subpart L is proposed to be amended by revising paragraphs (c) and (d) and by adding paragraph (e) to read as follows:

§ 86.1105-87 Emissions standards for which nonconformance penalties are available.

* * * * *

(c) Effective in the 1991 model year, NCPs will be available for the following additional emission standards:

(1) Petroleum-fueled diesel heavy-duty engine particulate matter emission standard of 0.25 grams per brake horsepower-hour.

(i) For petroleum-fueled light heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113-87(a):

- (1) COC_{90} : \$1,480.
- (2) COC_{90} : \$1,513.
- (3) MC_{90} : \$5,833 per gram per brake horsepower-hour.

(4) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113-87(h): 0.07.

(ii) For petroleum-fueled medium heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113-87(a):

- (1) COC_{90} : \$905.
- (2) COC_{90} : \$2,169.
- (3) MC_{90} : \$7,083 per gram per brake horsepower-hour.

(4) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113-87(h): 0.11.

(iii) For petroleum-fueled heavy heavy-duty diesel engines including those to be used for urban buses:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113-87(a):

- (1) COC_{90} : \$930.
- (2) COC_{90} : \$1,630.
- (3) MC_{90} : \$22,500 per gram per brake horsepower-hour.

(4) F: 1.2.

(B) The following factor shall be used to calculate the engineering and

development component of the NCP in accordance with § 86.1113-87(h): 0.11.

(2) Petroleum-fueled diesel heavy-duty engine oxides of nitrogen standard of 5.0 grams per brake horsepower-hour.

(i) For petroleum-fueled light heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113-87(a):

- (1) COC_{90} : \$830.
- (2) COC_{90} : \$946.
- (3) MC_{90} : \$1,167 per gram per brake horsepower-hour.
- (4) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113-87(h): 0.12.

(ii) For petroleum-fueled medium heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113-87(a):

- (1) COC_{90} : \$905.
- (2) COC_{90} : \$1,453.
- (3) MC_{90} : \$1,417 per gram per brake horsepower-hour.
- (4) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113-87(h): 0.11.

(iii) For petroleum-fueled heavy heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113-87(a):

- (1) COC_{90} : \$930.
- (2) COC_{90} : \$1,590.
- (3) MC_{90} : \$2,250 per gram per brake horsepower-hour.
- (4) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113-87(h): 0.11.

(3) Petroleum-fueled diesel light-duty trucks (between 6,001 and 14,000 lbs GVW) particulate matter emission standard of 0.13 grams per vehicle mile.

(i) The following values shall be used to calculate an NCP in accordance with § 86.1113-87(a):

- (A) COC_{90} : \$711.
- (B) COC_{90} : \$1,396.
- (C) MC_{90} : \$2,960 per gram per vehicle mile.

(D) F: 1.2.

(ii) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113-87(h): 0.01.

(d) Effective in the 1993 model year, NCPs will be available for the following additional emission standard:

(1) Petroleum-fueled diesel urban bus engine (as defined in § 86.091-2)

particulate matter emission standard of 0.10 grams per brake horsepower-hour.

(i) The following values shall be used to calculate an NCP for the standard set forth in § 86.093-11(a)(1)(iv)(A) in accordance with § 86.1113-87(a):

(A) COC_{50} : \$4,020.

(B) COC_{90} : \$4,535.

(C) MC_{50} : \$22,971 per gram per brake horsepower-hour.

(D) F: 1.2.

(E) UL: 0.25 grams per brake horsepower-hour.

(ii) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.093-11(a)(1)(iv)(A) in accordance with § 86.1113-87(h): 0.02.

(e) The values of COC_{50} , COC_{90} , and MC_{50} in paragraphs (a) and (b) of this section are expressed in December 1984 dollars. The values of COC_{50} , COC_{90} ,

and MC_{50} in paragraph (c) and (d) of this section are expressed in December 1989 dollars. These values shall be adjusted for inflation to dollars as of January of the calendar year preceding the model year in which the NCP is first available by using the change in the overall Consumer Price Index, and rounded to the nearest whole dollar in accordance with ASTM E29-67.

[FR Doc. 91-12511 Filed 5-28-91; 8:45 am]

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Register

Wednesday
May 29, 1991

Part III

Department of Transportation

Federal Aviation Administration
14 CFR Part 158

Passenger Facility Charges; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 158

[Docket No. 26385; Part 158(New)]

RIN No. 2120-AD87

Passenger Facility Charges

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule adopts new regulations to establish a passenger facility charge program. The rule implements sections 9110 and 9111 of the Aviation Safety and Capacity Expansion Act of 1990, enacted November 5, 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) of \$1, \$2, or \$3 per enplaned passenger 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 safety, capacity, or security of the national air transportation system, reduce noise from an airport that is part of such system, or furnish opportunities for enhanced competition between or among air carriers.

The rule sets forth procedures for public agency applications for authority to impose PFC's, for FAA processing of such applications, for collection, handling, 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.

EFFECTIVE DATE: June 28, 1991.

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:

Availability of NPRM's and Final Rules

Any person may obtain a copy of this final rule 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.

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 authorizes the Secretary of Transportation to approve local imposition of PFC's of \$1, \$2, or \$3 per enplaned passenger and to use PFC revenue for approved projects. Section 9110 of the Act requires the Secretary to issue regulations necessary to implement this authority.

On November 14, 1990, the FAA issued a "Request for Data and Information; Passenger Facility Charges" (55 FR 47483) seeking information helpful in developing this rulemaking. The FAA asked specific questions concerning methods and practices involved in fee collection, handling, remittance, and audit/recordkeeping procedures related to airline passenger ticketing. Thirteen commenters responded to this request for data. The comments are available for inspection in the FAA Rules Docket, No. 26385.

Subsequently the FAA published a Notice of Proposed Rulemaking (NPRM) (56 FR 4678; February 5, 1991) inviting all interested persons to submit written comments, data, views, and arguments.

In addition to requesting written comments, the FAA held a public hearing on February 15, 1991, at FAA headquarters, to hear testimony from interested parties. In all, 18 people testified at the hearing.

On March 7, 1991, the FAA extended the comment period until March 18, 1991. The extension responded to a joint request for additional time from the Air Transport Association of America (ATA), the American Association of Airport Executives (AAAE), and the Airport Operators Council International (AOCI).

The FAA received comments on the NPRM from a wide representation of the aviation and financial communities. Approximately 200 separate responses were received in the docket. The major categories of commenters were airport owners, scheduled air carriers (foreign and U.S.), air taxi and air charter operators, airport concessionaires, car rental companies, state aviation agencies, bond underwriters and financial institutions, and various aviation industry trade associations. Private individuals and several members of Congress also commented on the proposal. The AAAE, ATA, and AOCI jointly submitted comments on the NPRM ("joint submission").

Due to the large number of comments received, not every comment is individually addressed in this preamble, although all have been considered. Many of the less complex suggestions are accommodated by revisions in the final rule but not expressly discussed. In other cases, comments are grouped together with others regarding the same issue. The FAA has considered all comments received. However, this document will not generally address comments that request provisions already in the NPRM and unchanged in the final rule.

The procedures and requirements contained in the NPRM were intended to ensure compliance with the statute. This approach paralleled the AIP grant process to some degree, and many commenters indicate such a process would be excessive and burdensome. Many commenters argue that PFC revenue is local money, not federal, that restrictive procedures are unwarranted, and that the airport grant program should not be used as a model for this regulation.

The final rule is intended to provide public agencies with the flexibility to tailor their PFC programs to their own needs while meeting the requirements of the statute. In addition, it is intended to reduce the administrative burden as much as possible for public agencies and air carriers.

The final rule responds to the public agencies' desire to receive PFC revenue while environmental, airspace, and airport layout plan studies are being accomplished. Revenue collected prior to FAA approval of the project could be used, after approval is obtained to use the funds, to reimburse costs incurred during the project formulation period. It also could be accumulated so that financing needs for construction and other development will be partially (or fully) met when the project is ready for implementation. The final rule contains provisions for advance collection and safeguards to ensure that PFC revenue will be used only on approved projects. This issue is addressed more fully below. In contrast, the NPRM would have required all environmental, airspace and airport layout plan requirements be completed before an application could be submitted to impose a PFC.

Another change adding flexibility to the rule is a provision for public agencies to request that those classes of carriers providing less than one percent of the total annual passenger enplanements not be required to collect or remit PFC's at the airport. This is intended to give public agencies the

opportunity to reduce the administrative and financial burden associated with collecting PFC's from carriers whose operations would provide little PFC revenue. It would also reduce the burden on the carriers belonging to these classes.

Foreign carriers and U.S. carriers with international operations express concern about administrative costs and the legal authority of the U.S. to enforce the collection of PFC's outside the U.S. Thus, they recommend air carriers and foreign air carriers not be required to collect the PFC on such tickets. However, sales outside the U.S. represent a substantial number of U.S. enplanements, and, therefore, failure to collect PFC's on such tickets could account for a significant potential loss of revenue at some U.S. airports.

To accommodate these conflicting concerns, the final rule gives carriers the option of collecting PFC's only at the passenger's departure gateway. Air carriers and those foreign air carriers that serve a point or points in the U.S. will have three choices: (1) They may follow the regular collection procedure for U.S.-issued tickets; (2) they may collect PFC's for the passenger's U.S. departure gateway at the time of ticket issuance outside the U.S.; or (3) they may collect at the time the passenger is last enplaned in the U.S.

Another major issue was carrier compensation. Under the NPRM, the only compensation to which the carrier would have been entitled was the interest earned on PFC revenue prior to remittance. Numerous comments were received on this issue. Most, but not all, agree that additional compensation for carriers is justified. The final rule provides for a specific fee per PFC collected in addition to the interest earned prior to remittance. In addition, the final rule reduces the remitting, reporting, and auditing burdens of collecting carriers.

A number of airport commenters and financial institutions argue that the NPRM did not sufficiently provide for use of PFC revenue to support project-related debt. A primary concern is that uncertainty created by the termination process proposed in the NPRM could lead to lower bond ratings and higher project financing costs. Changes in the final rule are intended to increase investor confidence in PFC-backed bonds, enhance the marketability of such bonds and, ultimately, reduce the amount of PFC revenue needed for interest and financing costs. While the final rule retains the Administrator's statutory authority to terminate a PFC, the process has been significantly revised to provide assurance to all

parties that every effort will be made to resolve a problem before termination.

In addition, commenters note the NPRM did not specifically define debt service and bond financing costs as allowable costs reimbursable by PFC revenue. The definition of allowable cost is modified in the final rule to accommodate this concern.

A detailed discussion of the individual subparts in the regulation follows:

Subpart A

Subpart A contains the general provisions of the PFC rule including definitions, information on project eligibility, the authority to impose PFC's and certain limitations.

Section 158.3 Definitions

Several definitions in the NPRM generated numerous comments. After considering these comments, some definitions have been changed and other terms added. The following is a discussion of the significant departures from the NPRM.

Allowable cost. As proposed, allowable costs would have been those considered reasonable and necessary to accomplish the project, including formulation costs incurred before approval to impose a PFC. The comments express concern that this definition does not address debt related costs when PFC revenue is used to finance borrowing.

The final rule spells out allowable costs in more detail, and identifies debt service and bond financing by name as allowable costs. Allowable costs incurred after November 5, 1990, but prior to project approval, are reimbursable once the public agency receives project approval. A public agency's costs of administering its PFC program are also included in allowable costs.

This definition includes multi-phased projects listed in the airport capital plan. As noted in the NPRM, the FAA will retain the authority to do an independent review to determine what costs are reasonable and necessary. However, because a project may be financed entirely with PFC's or other local funds, the FAA would not ordinarily conduct the kind of detailed review associated with the AIP program. In addition, in the event of a dispute, the FAA will first look to local laws and procurement requirements and procedures for guidance in determining what costs are reasonable and necessary.

Approved project and project. The NPRM defined the term "project" to mean airport planning, land acquisition, noise compatibility measures and other

such work to be undertaken with PFC revenue. Because of the need to differentiate projects for which approval has been granted to use PFC revenue from projects still under consideration or those for which only imposition of a PFC has been approved, the final rule includes two definitions, "approved project" and "project." As the name implies, an approved project is one that has received FAA approval under Subpart B of this part for use of PFC revenue. The term "project" is used to refer to all projects whether approved or contemplated.

Bond financing costs. A new term, bond financing costs are the costs associated with issuance, underwriting, credit enhancement and the other costs of incurring new indebtedness. It does not include the cost of debt service, which is defined separately. The financial community suggests that these costs do not ordinarily exceed 2 percent of the debt package, but the FAA will not impose a regulatory limit. If such costs prove to be excessive, the FAA has the authority to take action in the future.

Collecting carrier. The NPRM defined "issuing carrier" to mean an air carrier or foreign air carrier that issues a ticket or whose imprinted ticket stock is used by an agent. All PFC collection would have been accomplished by issuing carriers under the proposal. As discussed below, the final rule has been modified to permit collection of PFC's by other than issuing carriers. The new term "collecting carrier" is added to refer to carriers collecting PFC's whether or not such carriers issue the air travel ticket.

Debt service. This term refers to items normally associated with the payment of interest, principal and fees.

Exclusive long term lease or use agreement. The NPRM defined "long-term lease and use agreements" as those of 5 years or more. This definition implements the statutory prohibition on exclusive long-term leases of PFC-financed facilities. Some commenters suggest that all exclusive leases be prohibited, and others suggest the definition refer explicitly to exclusive long-term leases.

The final rule modifies the proposed definition by inserting the word "exclusive." The FAA did not adopt the suggestion that all exclusive leases be prohibited because the statute itself bars only long-term exclusive leases. A public agency may adopt a policy of permitting no exclusive lease or use agreements of any duration for PFC-financed facilities, but it is not required to do so.

Implementation of an approved project. This new definition reflects the separate approval process to impose a PFC and to use PFC revenue. As discussed more fully below, the authority to impose a PFC will expire or terminate if a public agency does not begin implementation of an approved project in a timely fashion. This definition specifies the actions required to effect implementation of various kinds of projects. For a construction project, issuance of a notice to proceed to the contractor or the physical start of construction is required. For other projects commencement of work by the contractor or public agency to carry out a statement of work is required. For property acquisition, implementation is defined as beginning the title search, surveying or appraisal for a significant portion of the property to be acquired.

One-way trip and round trip. One of the most difficult issues in this proceeding has been finding a way to meet the statutory limitation of collecting no more than two PFC's per one-way trip and two in each direction of a round trip. Most trips can be identified as one-way or round trips as those terms are commonly understood, however, about 15 percent of trips cannot. These include open-jaw trips (those that have identifiable outbound and return legs but that have different origin and termination points) and other trips. The NPRM incorporated an earlier airport trade association suggestion that the one-way trip be defined according to a "four-hour rule." It would have specified that after each scheduled stop between flights of more than four hours, a new one-way trip would start.

The joint submission and other commenters state that this proposed definition is inappropriate and difficult to use. Instead, the joint submission recommends the rule provide for collection of PFC's at the first four airports, regardless of whether the trip meets the ordinary understanding of "round trip." In the alternative, the joint submission requests the PFC be collected at the first two and last two airports imposing PFC's. According to the commenters, these systems, particularly the first alternative, would be easier and less costly for the carriers to implement.

While sympathetic to these concerns, the FAA is bound by the statutory language, which clearly prohibits the collection of more than two PFC's on a one-way trip and more than two in each direction on a round trip.

Therefore, the final rule defines a round trip as a trip where the passenger's itinerary terminates at the origin point. Other trips are considered

one-way trips. This would include open jaw trips, as well as trips meeting the commonly understood meaning of one-way. On a one-way trip the carrier would collect PFC's for the first two enplaning airports imposing PFC's. On a round trip, the carrier would collect PFC's at the first two and last two enplaning airports where PFC's are imposed. This assures that PFC's will be collected from passengers on both directions of a round trip and not more than four charges will be made. The suggestion of collecting at the "first four" airports imposing a PFC could result in three or four charges on a one way trip, contrary to the statutory requirement.

Passenger enplaned. As proposed in the NPRM, "passenger enplaned" would have included passengers on board international flights that transit an airport within the continental United States for nontraffic purposes as is provided in the Airport and Airway Improvement Act of 1982 (AAIA). This category of passenger is excluded from the definition in the final rule. Without this change, passengers that transit an airport on a technical stop, such as for refueling or customs inspection, would be liable for payment of any PFC imposed at that airport. Such stops, however, are not shown on the passenger's ticket, a requirement for collection of the PFC. Additionally, the passenger is not "enplaned" at that airport as that term is generally interpreted.

State. The NPRM did not include a definition of State. This new definition has been added to the final rule to clarify that all territories and possessions of the United States that control commercial service airports may impose a PFC. Under the rule, a State is defined to include the District of Columbia, Puerto Rico, the U.S. Virgin Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands and Guam.

Unliquidated PFC Revenue. The NPRM did not include a definition of this term and a number of commenters were unclear about what this term meant. The term is defined as PFC revenue received by the public agency but not yet used on approved projects.

Section 158.5 Authority To Impose PFC's. (Proposed: Authority To Impose PFC's)

As proposed, this section would have permitted a public agency controlling a commercial service airport to impose a \$1.00, \$2.00 or \$3.00 PFC on passengers enplaned at the airport. It also would have prohibited states or political

subdivisions of states not controlling such airports from imposing a PFC.

Comments: Some commenters recommend a uniform fee of \$3.00, arguing the cost of programming automated systems would be as much as 24 percent less if only one amount were permitted to be collected. They also claim that there is a limited space on the automated ticket stock for individual PFC charges. The commenters also suggest the rule would be less confusing to the travelling public. However, some smaller airports indicate that they would not impose the maximum allowed PFC amount if they could impose a lesser amount.

Final rule: While the FAA recognizes the merit of these arguments, statutory language clearly permits airports to impose PFC's of \$1.00, \$2.00 or \$3.00. Therefore, this section is unchanged from the NPRM. However, while the ticket will be required to indicate each PFC airport, only the total amount of PFC's collected must be shown on the ticket. This change should eliminate some of the burden on carriers of collecting a variable charge.

Section 158.9 Limitations. (Proposed: Limitation Regarding Passengers of Air Carriers Receiving Essential Air Service Compensation).

As proposed, this section would have prohibited the imposition of a PFC only on specific flights to an essential air service (EAS) point for which compensation was being paid. In addition, it would have required the compensated carrier to notify other carriers of these individual flights.

Comments: Several comments request the prohibition on PFC collection for these flights be removed, thereby allowing PFC's to be collected from all passengers enplaning at an airport imposing a PFC. The commenters also ask that if the limitation is retained, the Department of Transportation should provide a monthly list of those carriers compensated and the flight to EAS airports for which compensation is paid. Comments also point out carriers cannot always designate the specific flights for which EAS compensation is paid.

Final rule: The statute clearly prohibits airports from collecting PFC's on flights to EAS points over routes for which EAS compensation is paid. However, it is not possible to distinguish which flights by that carrier on a particular route are compensated. Therefore, the final rule, § 158.9(a), states that no PFC may be imposed on any flight to the eligible point (EAS airport) by a carrier serving a route for which EAS compensation is paid to that

carrier. Thus, in response to the comments, the final rule does not require compensated carriers to identify individual flights as those for which compensation has been received. However, a public agency may impose a PFC on passengers enplaned on any flight to an EAS point that operates over a route for which no subsidy is paid. This includes service over the subsidized route by a carrier not receiving EAS compensation in addition to service over other routes by any carrier.

In addition, the final rule is modified to eliminate the requirement that EAS carriers provide notice of compensated service. The FAA will make available a monthly list of carriers and airports receiving essential air service compensation.

A new § 158.9(b) is added to the final rule. This provision prohibits a public agency from requiring a foreign airline with no service to the United States to collect a PFC. This subject is addressed further in the discussion of § 158.47.

Section 158.11 Public Agency Request Not To Require Collection of PFC's by a Class of Air Carriers or Foreign Air Carriers

This section was not in the NPRM, but was added following consideration of the comments received. The NPRM would have required all air carriers and foreign air carriers to collect a PFC and would have required public agencies to consult with all such carriers at the airport.

Comments: Numerous comments request that particular classes of persons or carriers not be subject to PFC's. These include military and government personnel travelling on official business, passengers of on-demand air taxi operators, all international passengers, all charter passengers, persons travelling on "frequent flyer" discount fares and others. Some of these suggestions were proposed solely for the convenience or financial benefit of the commenting party, while others are based on concerns that the cost of collection to both the carrier and the public agency would outweigh any benefits of the PFC revenue derived by the public agency.

The joint submission recommends public agencies be given discretion to impose PFC's on passengers travelling on carriers in any class accounting for one percent or less of total enplanements at the particular airport.

Final rule: The FAA believes the proposal in the joint submission provides a reasonable cut-off point, and it forms the basis for the final rule. The FAA notes that the PFC will be a local

charge, generating local revenue to be used locally. However, to ensure that public agencies designate classifications accurately, reasonably and without arbitrary or discriminatory effect, the final rule requires public agencies to obtain FAA approval of any class of carriers not required to collect a PFC.

Thus, while air taxis, for instance, may not make up 1 percent of the enplanements at large hub airports, that class may provide the majority of enplanements at smaller airports. Therefore, it would be unfair to these smaller airports to categorically exclude this type of operator.

Section 158.11 allows public agencies to determine what classes account for less than one percent of the airport's enplanements and to exclude them from the initial notice and consultation requirements under § 158.23. However, the public agency must formally request that particular classes of carriers not be required to collect PFC's as part of its application for authority to impose the PFC or as part of the amendment procedure. Since this request would be an essential part of the PFC application, disapproval by the Administrator of the proposed class would require the public agency to engage in reconsideration with all carriers operating at the airport and subsequent application.

Therefore, it may be prudent for the public agency to proceed with caution in preparing to submit the first such application. FAA Airport offices may be able to provide informal assistance in designating appropriate classes, but this assistance should not be relied on as an approval with respect to any request or class.

Section 158.13 Use of PFC Revenue. (Proposed: Use of PFC Revenue.)

As proposed, this section would have permitted the use of PFC's to pay the total cost of eligible projects and to pay debt service on bonds or other indebtedness incurred to carry out PFC-eligible projects. However, debt service was not otherwise defined.

The NPRM would not have allowed a public agency to use PFC revenue to finance the local matching share for projects receiving AIP funds. The FAA's intent was to ensure that PFC revenue would be used to supplement other sources of local airport construction funds rather than replace them.

Comments: The latter proposal drew a great deal of criticism, including a letter from several members of Congress arguing that Congress intended that PFC's be used as the local share for AIP projects. In particular, small airports argue such a prohibition would eliminate their ability to implement AIP

projects; this, they claim, would defeat the intent of this program to enhance the capacity of the national airspace system.

Airports and the financial community also request that reimbursable debt service be further defined. Bond financing costs should also be eligible. A final comment in this area urges that the rule prohibit a public agency from imposing additional user charges to help pay the costs of a PFC-financed project.

Final rule: PFC revenue may be used to meet the non-federal share of projects funded under the AIP. The FAA recognizes the special problems that smaller airports may have in generating local matching funds and that PFC revenue may be a necessary source for the local match. The FAA intends to maximize the funds available to enhance safety, capacity, security and competitiveness under the PFC statute, and the FAA has been persuaded that this change in the final rule will accomplish this objective.

The FAA also is mindful that PFC revenue is local revenue. Historically, the FAA has not defined permissible and impermissible sources of local matching revenue under the AIP. Finally, the FAA notes that the statute is silent on the availability of PFC revenue for the local match.

This section also provides for the use of PFC revenue for bond associated debt service and financing costs. To further enhance the value of PFC revenue streams as support for debt financing, § 158.13(b)(2) of the final rule permits PFC revenue to be commingled with the airport's general revenue stream when required by bond documents. However, the correct proportion of the bond proceeds (or an equal amount) must be used for approved projects and any excess collections over annual debt service or other financing costs must be used on approved projects or to retire existing PFC-financed debt. Also, under § 158.13(c), public agencies may combine PFC revenue and federal grant funds to accomplish an approved project. This provision is unchanged from the NPRM.

Section 158.13(e) expressly requires a public agency to obtain FAA approval to use PFC revenue before the public agency may expend PFC revenue. Thus, if a public agency wants to use PFC revenue to fund environmental studies and other planning activities before receiving full project approval, it will have to identify these formulation activities as a separate project or projects for use of PFC revenue. Otherwise, it could be reimbursed for costs incurred for these activities once it

obtained project approval. More information on this two-step application process can be found in § 158.25.

The final rule does not prohibit the imposition of additional user charges to help pay for the costs of a PFC-financed project. The statute prohibits a public agency from including the PFC portion of the cost of any project in its rate base. However, a public agency may establish user fees to recoup the costs of operating and maintaining any such facilities, as well as any financial contribution not covered by PFC's or the AIP.

*Section 158.15 Project Eligibility
(Proposed: Project Eligibility)*

As proposed, this section specified the kinds of projects that could be funded by PFC revenue and the objectives these projects must achieve to receive approval for use of PFC revenue. Eligible projects, by statute, are those that preserve or enhance the safety, capacity or security of the national air transportation system, reduce airport noise or mitigate airport noise impacts or enhance competition among air carriers. In addition, PFC financing would have been available for AIP-eligible airport development and planning projects, AIP-eligible terminal development, airport noise compatibility planning as described in 49 U.S.C. 2103(b), noise compatibility measures eligible for Federal assistance under 49 U.S.C. 2104 and public use, revenue and non-revenue passenger enplanement or deplanement areas and related facilities. The NPRM also provided examples of non-eligible categories of facilities, including all concessions, car rental facilities, restaurants and parking garages.

Comments: Several commenters question whether off-airport ground transportation projects are eligible. Smaller airports also request that concession facilities, including car rental and parking facilities, be eligible for PFC financing.

Final rule: The text of the rule has not been changed from the NPRM in any material way. However, ground transportation projects are eligible if the public agency acquires the right-of-way and any necessary land. Ownership is also necessary for project eligibility under the AIP. In this case, under the statute, PFC eligibility is identical to AIP eligibility. The final rule does not set any eligibility restrictions on the mode of transportation for airport access projects, nor does it impose any requirements on the geographical proximity of the project to the airport. These issues will be reviewed on a case-by-case basis as part of the

Administrator's review and approval of an application to use PFC revenue.

Concession facilities are not eligible under the final rule for two reasons. First, such facilities are not AIP-eligible. Second, while gates and related areas are eligible projects, the FAA finds no basis for expanding the definition of eligibility to include concession spaces in these areas. Third, these facilities do not appear to increase the safety, security or capacity of the national air transportation system or increase airline competition, as required by the statute.

Subpart B

This subpart specifies the 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.

*(Proposed Section 158.23
Requirements Prior to Submission of
Applications)*

The NPRM proposed the requirement that airport layout plan, airspace and environmental studies be completed and approved prior to submission of an application for a PFC by a public agency. The concept of such prerequisites for all PFC's drew criticism from over 40 respondents, especially the airport community. Many argue that the statute does not limit approval of authority to impose a PFC to only those situations where a project is ready to be implemented. Rather, they assert, a public agency should be authorized to collect for a major project, or slate of projects, that are nominally eligible but are still in the planning stage.

The majority of these commenters suggest that completion of all or some of the proposed prerequisites be deferred until the public agency submits an application to use its PFC revenue. Others argue that these requirements should not be applicable to imposition of a PFC or to implementation of PFC-financed projects.

An important consideration in this regard is the degree to which approval to impose a PFC irrevocably commits the FAA or a public agency to a course of action on a proposed project. If approval to impose a PFC is equivalent to such a commitment, the FAA's approval could be a major Federal action requiring a review under the National Environmental Policy Act of 1969 (NEPA), and it would be necessary to complete all environmental studies prior to such approval. Therefore, the FAA sought comments in the NPRM on whether the approval of an application

to impose a PFC would be a major Federal action under NEPA or, alternatively, whether such approvals are outside the scope of NEPA.

Two respondents provide particularly helpful comments in this regard. They cite applicable court rulings and draw meaningful comparisons between these decisions and the approval of authority to impose a PFC separately from approval to use PFC revenue on a specific project. Following further analysis, the FAA has concluded that, with clear requirements for meaningful alternatives available to the proposed project and adequate safeguards on the expenditure of PFC revenue prior to approval, approval to impose a PFC would not ordinarily be a major Federal action within the meaning of NEPA. Rather, in most cases the approval would be categorically excluded from the requirement for an environmental assessment or statement. Environmental reviews would, however, be required before approval is given for use of PFC revenue to finance a project under the same procedures as are currently applicable to AIP or locally financed projects subject to FAA approval.

Although about one out of six respondents commenting on this issue concurred with the method set forth in the NPRM, the FAA agrees with the views of the majority that prior completion of environmental, ALP and airspace studies is not required for an application to impose a passenger facility charge. Accordingly, the final rule provides a procedure under which a PFC may be imposed prior to the completion of such studies.

The FAA recognizes the danger cited by some commenters that, in extraordinary circumstances, mere approval to impose a PFC may as a practical matter, commit the FAA or a public agency to a course of action or may otherwise influence future Federal decisions. If the FAA believes that danger to exist in a particular case, it will not approve an application to impose a PFC unless the appropriate environmental reviews have been completed.

In addition, the procedures for consultation, application, review and approval set forth in the NPRM are modified in the final rule to accommodate applications submitted for the authority to impose a PFC, either before or with an application to use PFC revenue on an approved project.

Several commenters propose various ways to streamline the process for notice, consultation, application, review and approval. Most involve submission of a comprehensive slate of projects in

the form of a master plan or capital program. One airport authority proposes a completely different process based on that concept with abbreviated periods for consultation and review. The FAA may, in some cases, be able to complete its required notice and review processes in less than the 120 days permitted by the statute. However, because of complexity or opposition, there are likely to be many applications that will not be able to be fully evaluated in less than the full 120-day period.

The FAA has attempted to adopt the spirit of the comments that urge a more streamlined, less complicated, process in obtaining approval to impose a PFC and to use the revenue remitted by carriers. Many of the suggestions were accepted and resulted in revisions in the final rule. Readers familiar with the NPRM will note substantial change throughout this section. Not all the comments were adopted, however, and the reasons are given in the discussion of each section below.

Section 158.23 Consultation With Air Carriers and Foreign Air Carriers (Proposed: § 158.25 Consultations With Air Carriers and Foreign Air Carriers)

This section in the NPRM would have required that, to the extent possible, a public agency provide notice to all air carriers and foreign air carriers currently operating at the airport. It specified the items to be included in such a notice, time limits for acknowledgement by air carriers of receipt of the notice, meeting requirements, and it established that the carriers must certify agreement or disagreement with the proposed projects.

Comments: Airports and airport organizations argue for relaxed notice and consultation requirements. Some recommend that air taxi operators be exempt from the notice procedure required of public agencies, and others urge a like exemption for charter operators because, by definition, they serve the airport on an irregular basis. A few endorsed the requirement in the NPRM that all carriers be notified and consulted. A number of commenters point out that a public agency's cost for consultation could easily exceed the amount of PFC revenue collected for some air carriers that enplane small numbers of passengers. The joint submission also suggests that attempts to coordinate and require collection of PFC's below some threshold of enplanements would be uneconomic. New § 158.11 was developed in response to their suggestions in this regard.

Final rule: The FAA weighed the comments requesting relief from notice

to and consultation with all air carriers and concluded that the relief sought is warranted. Accordingly, § 158.23(a) has been modified to reflect the provision in § 158.11 that allows public agencies to request such relief with respect to any class of air carrier enplaning less than one percent of all passengers enplaned at the airport. The information about any such class of carrier is now included in § 158.23(a)(3) of the final rule. The Administrator's decision granting or denying such a request is discussed below under § 158.29.

Public agencies should note, however, that FAA approval or disapproval of the request will occur only in conjunction with the approval or disapproval of an application to impose a PFC under § 158.29. The Administrator must ensure that any relief to a class is reasonable, not arbitrary and not discriminatory. If the request is approved under that section, carriers in the named class or classes would not be required to collect the PFC. If the request is not approved, the public agency will have to undertake new consultations with carriers, including the class or classes which were named in the original application.

A few commenters recommend that consultation be limited to "major operators" at the airport. While this approach would seem to address the carriers serving most of the passengers enplaned at an airport, and, therefore, could comply with the spirit of the consultation requirement, the term itself is difficult to define. There is no agreed-upon level of activity that would serve to divide "major operators" from other operators at an airport; in addition, the same carrier may be considered "major" at one airport, but not at another. Therefore, the FAA has not adopted this suggestion.

Other commenters believe that no airline consultation is necessary, that consultation could be satisfied by mailing all project information to carriers in lieu of a meeting, or that consultation should not be needed on projects not affecting operations. The FAA did not adopt these suggestions because the statute is quite clear that air carriers should be consulted, that a meeting is required, and that the nature of the project is not a basis for eliminating consultation on a PFC-financed project.

There were also comments recommending that airlines not currently serving the airport, air cargo carriers and passenger representatives be consulted. The FAA encourages public agencies to involve as many interested parties as possible in the consultation process, but cannot, under the statute, make such widespread consultation a

requirement. Of course, for any project requiring environmental study prior to implementation, all interested persons must be afforded the opportunity to provide comment. In addition, the FAA provides notice to and opportunity for comment by all interested parties during the application review process under § 158.27.

Some commenters argue that notice should be sent by registered letter or published in the *Federal Register*; others suggest that a facsimile transmission would be adequate. The FAA has chosen not to specify the form of written notice, leaving that choice to the public agency. However, failure by a public agency to satisfy the written notice requirement of this section could result in disapproval of an application. The *Federal Register*, as the vehicle used by the Federal Government to provide public notice, is not readily available for use by non-Federal organizations or individuals.

The remaining changes in this section result from reorganization and editing to improve clarity.

Section 158.25 Applications (Proposed: § 158.27 Application)

A main feature of the procedure proposed in the NPRM was the requirement that all environmental and technical studies for a proposed project be completed and approved before the PFC application could be submitted. As proposed, this section would have required public agencies to file applications not more than one year in advance of the proposed charge effective date and to implement an approved project within 2 years of that date. No provision was made for separate approval to impose a PFC in advance of project approval. Applications for more than one project would have been acceptable, but no work other than project formulation could have commenced until project approval.

The NPRM also set forth information that would have been required to accompany the application, and specified that the Administrator could request additional information if needed. In addition, the proposed rule referred to an application form depicted in Appendix A and accompanying public agency assurances set forth in Appendix B.

Comments: Most commenters argue that PFC application procedures modelled after those for AIP grants, as proposed in the NPRM, would be too burdensome and restrictive. They urge instead simpler, more flexible,

procedures for application, review and approval.

A number of commenters argue that authority to impose PFC's should be allowed separately in advance of project approval, as long as the public agency can demonstrate that it has under consideration or preparation sufficient projects that are nominally eligible for use of the PFC revenue collected. One commenter proposes that approval of a major capital program, a new airport, for example, be tied to a showing by the public agency of a demonstrated need for the program.

Under the two-step process most suggest, a public agency could submit an application to impose a PFC for projects currently in the planning stage and later file for approval of a specific project, or an extensive list of projects such as a long term capital plan. The documentation needed for project approval, say these commenters, can be submitted when appropriate for review and approval of specific projects on which PFC revenue would be spent.

Some respondents suggest slightly differing sequences for completing environmental and technical requirements in relation to PFC and project approval. One suggests that these requirements be accomplished in tandem with consultation; another that they be done concurrently with the Administrator's review and approval process; a third argues that environmental and technical approvals are not needed for PFC-financed projects; and a fourth suggests that a previously approved ALP can be used to satisfy that requirement.

Many commenters also suggest that an application to impose a PFC in advance of approval to use PFC revenue be accompanied by a list of back-up projects on which the accumulated revenue could be spent if major multi-phase projects were ultimately disapproved. A similar suggestion is that the public agency describe any alternative methods it is considering to accomplish its stated objectives.

A comment appearing frequently is that the term "project" in the application should be broadened to include major capital plans and multi-phased programs. Those who support this concept argue that this would give public agencies the flexibility they need to apply PFC revenue to specific projects in the most efficient manner and reduce the need to reapply for each successive project.

Many commenters also suggest that a public agency should have the flexibility to revise its implementation schedule for approved projects in a capital plan in any order it considers appropriate. This

they argue, would allow public agencies to respond quickly to changing local priorities and to take advantage of more economical contracting and procurement opportunities. Another proposal for added flexibility suggests that public agencies be allowed to gradually phase in increasing PFC levels at their airports.

A number of comments specifically relate to time limits proposed in sections 158.27(c) and 158.27(d) of the NPRM. A few suggest that applications be accepted more than 1 year in advance of the proposed charge effective date; others argue for more than the proposed 2 years that would have been allowed between application approval and project implementation; and at least one commenter urged that no more than 6 months be allowed from the time of PFC approval to implementation.

A number of commenters express confusion with respect to the term "formulation" as it was used in the application procedure outlined in the NPRM. Several respondents suggest that the FAA define the term and some offer their own definition. Other commenters seek to expand the meaning of project to include various specific activities often associated with project formulation such as contracting for architectural and engineering services.

Others strongly urge that projects such as environmental studies and preliminary plans be eligible or reimbursable in conjunction with proposed projects. They assert that smaller airports in particular will not be able to afford the cost of required studies if they cannot use PFC revenue for that purpose.

Some commenters suggest that the application also include a certification from the public agency that it is not in violation of sections 9304 or 9307 of the Airport Noise and Capacity Act of 1990. A suggested alternative is that the FAA make that a specific standard of the approval process. Another commenter proposes that public agencies certify in the application, and on the form depicted in appendix A of the NPRM, that FAA's NEPA requirements have been satisfied.

One commenter argues that the application should include a checklist on which the public agency would be required to indicate deficiencies in airport safety or design standards. This commenter argues that an application to impose a PFC for a project other than to address such deficiencies should require an additional justification. Another seeks a requirement for project description to ensure that projects intended to benefit primarily all-cargo

operators be easily identified for disapproval.

Some commenters recommend that the meaning of several terms used in the NPRM should be clarified or their use eliminated. Among these, it is suggested that the proposed requirement for a financial plan be revised to accommodate preliminary financial estimates; that the final rule provide guidelines for preparing acceptable enplanement projections; and that applications require greater specificity in the factors used to propose a charge effective date and other estimates related to total PFC revenue. One comment suggests that there is no valid need for a public agency to project the total PFC amount.

While one commenter asks for an explanation of what additional information the Administrator might request, as was provided for in the NPRM, another proposes that the provision be deleted.

Finally, two public agencies propose that certain existing agreements between airport sponsors under the AIP be used to justify relaxation of application requirements. One recommends that, where the FAA has issued a letter of intent (LOI) with respect to future funding of an approved program or project, and the LOI requires the public agency to impose a PFC, the public agency not be required to obtain the additional approval to impose a PFC. Another suggests that sponsors already obligated by AIP grant assurances be relieved of having to submit additional assurances with an application to impose a PFC.

Final rule: The FAA agrees that the authority to impose a PFC can be granted in advance of an approval to use PFC revenue on specific projects.

Accordingly, this section of the final rule is restructured to provide two application options. Under the final rule, a public agency may apply for authority to impose a PFC while finalizing the plans and studies for a project to be financed with the PFC revenue. The application to use the PFC revenue may then be submitted when all needed plans are complete and prerequisite approvals have been obtained. Alternatively, if a public agency is ready to immediately implement a project using PFC revenue, it may apply to do so at the same time it files the application to impose the PFC. The information to be submitted with an application for the authority to impose a PFC and to use PFC revenue are set forth in § 158.25(b) and (c), respectively, in the final rule.

The FAA considers the final rule to permit substantial flexibility on

alternative sequences to complete the requirements for approvals to impose a PFC and to use PFC revenue. A public agency may, in many instances, pursue completion of these requirements concurrently. The FAA considers it unnecessary, however, to specify in the rule the various paths by which a public agency satisfy the requirements.

The information to be submitted in all cases in which a public agency seeks the authority to impose a PFC is set forth in section 158.25(b). Inasmuch as the final rule does not include a specific form on which the application is to be submitted, as was proposed in Appendix A of the NPRM, the listing of required information in this section is more detailed. (The FAA intends to develop an application form independently from this rule, but a public agency need not await its availability in order to file an application.)

The application to impose a PFC requires information about the public agency, the airport at which the PFC is to be imposed and at which the revenue is to be used, the PFC level to be imposed, the proposed charge effective date and the project, including its justification.

In this regard, the definition of "project" in subpart A is revised as discussed above to clarify the FAA's intent that large capital programs and multi-phased projects, as well as more modest projects, are considered approvable. The requirement under § 158.25(b)(6), therefore, may be interpreted broadly or narrowly, as in the case of a public agency with plans for the immediate use of PFC revenue on discrete projects.

The results of consultation with air carriers and foreign air carriers are also to be submitted.

If the public agency wishes to request that any class of air carrier not be required to collect the PFC at the airport, that request and specified information regarding the class must accompany the application.

If the project is still in the planning stage and the public agency is seeking only the authority to impose a PFC, the financial information required by § 158.25(b)(14) must still be included. However, a public agency is required to provide only as much information as can reasonably be expected to be available during the planning stages of a comprehensive capital program. Finally, the FAA retains the provision whereby the Administrator may request additional information.

In a case where the public agency intends to proceed immediately with a PFC-financed project, the application should include the information required

under § 158.25(c)(1) of the final rule. If such is the case, the public agency need not submit the information set forth in § 158.25(b)(14). It should be noted that a public agency is required to submit a signed certification regarding the completion of any necessary environmental, ALP and airspace studies and approvals. (If the application is to conduct planning or environmental study projects, to be done in preparation for a later application involving construction, this certification is not required.) The FAA intends to monitor the veracity of this certification closely to ensure that all requirements are fully met before granting approval to use PFC revenue.

If a public agency has obtained approval of an application for the authority to impose a PFC, and later applies for the authority to use accumulated PFC revenue, it must first consult further with air carriers and foreign air carriers. This consultation is intended to be less rigorous than the first in that it requires no meeting at which the public agency presents its proposed project to the carriers. It should, however, emphasize new or revised PFC or project information, including cost, that is relevant to the application. The public agency must then submit the information required under § 158.24(c)(2) of the final rule, including a summary of the further consultation. Again, the emphasis should be on changes to the original application to impose a PFC.

Whether a public agency intends to seek approval to use PFC revenue concurrent with or subsequent to the approval to impose a PFC, the project it proposes may consist of one or more discrete projects or a general program of projects. In either case, the public agency has the option to implement approved projects in whatever order best responds to local priorities and best meets local objectives regarding airport development.

The FAA agrees that an application to impose a PFC by a public agency that has been found to be in violation of these provisions should not be approved, and incorporates this provision as a criterion for approval, rather than including it as an item to be included in the application. See the discussion below on § 158.29, the Administrator's decision, in this regard.

The FAA has concluded that it is unlikely that a public agency will file an application to impose a PFC more than 1 year in advance of its proposed charge effective date and, consequently, this provision is deleted in the final rule. The 2-year limit for implementing a project approved under § 158.25(c), however, is

considered appropriate. When coupled with the option to impose a PFC for an additional 3 years before approval to use the funds, as discussed below under §§ 258.31 and 158.33, a public agency may accumulate PFC revenue for up to 5 years before actually implementing a project. See the discussion of §§ 158.31 and 158.33 below regarding duration of authority to impose a PFC prior to obtaining project approval and prior to implementing an approved project.

The FAA considered developing a definition for "formulation" but has not done so. The problem lies, in part, with the fact that some costs of formulating a project, e.g., environmental studies, can be undertaken by public agencies as individual projects. (Some commenters interpreted the NPRM too narrowly in this regard.) Conversely, land acquisition, which is considered project formulation under the AIP, clearly could not be financed with PFC revenue until such use is approved.

This issue is resolved in the final rule by revising the definition of "allowable cost" as discussed above under subpart A to clarify that the costs can be incurred prior to approval to impose a PFC or use PFC revenue. It should be understood, however, that a public agency that incurs costs related to a project before the project is approved, may use PFC revenues to reimburse those costs only if the project is ultimately approved.

The FAA has chosen not to require an airport safety checklist or specific steps to highlight any particular type of project. To do so would indicate that the FAA intends to substitute its priorities for those of the public agency controlling the airport. In addition, with respect to concerns about airport safety, the FAA conducts periodic inspections of certificated commercial service airports to help ensure that critically needed safety projects are implemented when needed. This should be addressed during the required consultation process prior to the filing of an application. With regard to highlighting specific types of projects to preclude PFC of funding ineligible items, section 158.15(b)(6) indicates some of the types of projects that are ineligible for use of PFC revenue. The FAA is confident that, because eligibility for PFC-financed projects so closely parallels that for AIP-financed projects with the exception of gates and related areas, there is little likelihood that ineligible projects will be proposed or financed with PFC revenue. Consequently, these proposals are not incorporated in the final rule.

The FAA has not adopted suggestions that final rule incorporate more specific

guidelines for preparing any types of projections or any estimating methods that a public agency may use to develop its proposed charge effective or expiration dates. There is sufficient expertise extant in this specialized area that to proscribe a particular methodology by rule would reduce flexibility to adopt new or proven methods to locally controlled estimating needs. Although the FAA declines to specify the methods for developing such estimates, the final rule retains the requirements that public agencies present certain temporal and financial forecasts.

Readers will also note that the final rule retains the provision allowing the Administrator to request additional information if it is needed to fully evaluate an application. Although the Administrator would have that authority even in the absence of this provision, its presence is intended to advise public agencies that some additional information may be needed in certain circumstances. Because it cannot be predicted what specific information could be needed in a given case, however, the FAA has chosen not to articulate examples of information that potentially could be requested.

The final rule also retains the application requirement that public agencies certify in writing that they will comply with certain assurances related to the imposition of PFC's and the use of PFC revenues. These are considered necessary to ensure that projects constructed with PFC revenues are compatible with airport safety and design standards, further the policy of encouraging air carrier competition, and assuring compliance with specific PFC-related requirements. The individual assurances in the final rule are discussed below under appendix A.

The FAA has also decided not to adopt the proposal that an airport sponsor required by a letter of intent issued under the AIP to impose a PFC be exempt from the PFC-related application requirements. While certain of the consultation and application requirements may be redundant, the statute cannot be interpreted to provide such an exemption. In addition, although prior consultation and project approval will very likely allow speedier review and approval, it can also be expected that new issues will arise pertaining to imposition of the PFC and use of the revenue.

Section 158.27 Review of Applications (Proposed: Review and Approval Process)

As proposed, this section included the procedures for review of applications

and the standards and procedures for approval of applications by the Administrator in a single section. With respect to review, the NPRM proposed that the Administrator would review the completeness of the application within 30 days after receipt. If the application was complete, the Administrator would have published a notice in the Federal Register soliciting public comment. Comments would be due in 30 days. Following review of the record, including public comments, the Administrator would have issued a decision within 120 days of the receipt of the application.

If the application was not substantially complete, the NPRM provided for the Administrator to advise the public agency of the deficiencies, and the public agency would have had 15 days to advise the Administrator of its intention to supplement the application. If the public agency chose not to supplement the application, the Administrator would have proceeded with a Federal Register notice inviting public comment and would have issued a decision within 120 days after receipt of the application. If the public agency supplemented the application, the Administrator would have reviewed the supplemented application for completeness. If the Administrator still considered the supplemented application to be incomplete, the public agency would have had a further opportunity to supplement the application. This process could have been repeated until the Administrator determined that the application was substantially complete or the public agency declined to file further supplements. Following notice and an opportunity for public comment, the Administrator would have issued a decision within 120 days after receipt of the final supplement.

The proposed rule also included provisions specifying the contents of the Administrator's decision to be published in the Federal Register and the standards for approval of PFC applications.

Comments: A number of commenters urge that the process be streamlined, and many propose the elimination of certain requirements, as discussed below. At least one commenter suggests that some expedition could be achieved if certain steps could proceed in tandem rather than sequentially. Others propose that certain requirements be eliminated.

Two airports propose that the rule provide for an Administrator's decision in less than 120 days, especially in the case of PFC applications that are not opposed by carriers. One of these proposals is part of a larger

recommendation to expedite the review process.

With respect to completeness determinations, an airport operator proposes that the FAA take only 15 days to review the completeness of the application. On a related matter, another airport authority proposes that instead of restarting the 120-day decisional clock with receipt of each supplement, the final rule provide for a suspension of the clock between the time the Administrator determines the application is not substantially complete and receipt of the final supplement. Finally, one commenter suggests that notices of substantially complete applications under § 158.27(a) include a description of information required to achieve full conformity, or, in the alternative, that the concept of substantially complete be defined. Some airport commenters propose eliminating the Federal Register notice following receipt of an application as unduly burdensome or limiting public comments on the Federal Register notice to airport users. Another proposes that commenters be required, not merely permitted, to submit any comments in the local consultation process as their comments to the FAA. One trade association recommends that the FAA comment period conform to the period allowed in the local consultation process. A Federal Government agency proposes that the final rule omit the requirement that commenters serve a copy of their comments on the public agency and that the FAA arrange to forward public comments.

Final Rule: In addition to the many changes made in direct response to the public comments, the FAA has made a major structural change in the final rule. In the NPRM, § 158.29 contained proposed provisions that would govern both the FAA's review of an application and the Administrator's decision. The FAA has separated the provisions on FAA review and the Administrator's decision into § 158.27 and § 158.29 respectively. This separation is made because the same review process will be used for both an application for authority to impose a PFC and an application to use PFC revenue. In contrast, the Administrator's decision and standards for approval will vary with each kind of application. Section 158.29 is discussed more fully below.

The FAA has made some changes to simplify the review process, as discussed below. In addition, the provision for separate applications to impose PFC's and to use PFC revenue should permit some public agencies to impose a PFC sooner than would have

been possible under the NPRM. However, many of the steps of the review process are mandated by statute, e.g. notice and an opportunity for comment after FAA receipt of an application. Other steps are necessary to meet requirements imposed on the FAA. For example, the preliminary review for completeness is necessary to ensure the FAA will be able to make a decision on an application within the time required by statute. Many of the commenters' suggestions, including, for example, the proposal for a complete expedited review process, could not be implemented in the final rule as discussed below.

To simplify the review process, the final rule eliminates multiple supplements to applications deemed to be substantially incomplete by the Administrator. Under the final rule, the public agency may be required to provide only one supplement to the application. This change should eliminate the possibility that the review process can be extended for long periods without a final decision. A decision denying an application would not prevent the public agency from reapplying following further consultations.

The final rule does not provide for concurrent completion of different steps of the process, although that may be possible in the future.

The statute requires certain steps to be completed before filing the application and gives the FAA 120 days to complete the review. Given these requirements, the FAA is reluctant to provide specifically for concurrent actions at this time prior to gaining experience in implementing the rule. Therefore, the final rule does not reduce the number of days for the Administrator's decision on an application.

The final rule retains the provision for Federal Register notice and opportunity for public comment since this notice is the usual means of advising the public of that opportunity. The FAA will bear the burden of publishing the notice. The requirement that the public agency make a copy of this notice available upon request should not be unduly burdensome since a copy for inspection at the airport is sufficient. Publication of the notice in a local newspaper is optional with the public agency. As to limiting comments to users of the airport, the statute specifies that any "interested person" have an opportunity to comment, and there is no statutory basis for treating that language as limiting comment to airport users. Moreover, potential "users" of the airport may come from anywhere in the

country. Therefore, the final rule does not incorporate either of these suggestions.

The final rule also retains the 30-day FAA comment period proposed in the NPRM. If the comment period matched the total time allowed in the local consultation process, 75 days, the FAA would, in many cases, have insufficient time to complete the review process within the 120 days provided in the statute. Also, the final rule does not require air carriers to submit to the FAA their comments in the local consultation process. Such a requirement would effectively preclude air carriers from responding to a public agency's explanations of its reasons for pursuing an application in light of certifications of disagreement and in doing so would frustrate the purpose and value of the notice and comment requirement.

The final rule also retains the requirement that commenters serve a copy of their comments on the public agency. Principles of fundamental fairness clearly entitle an applicant to be made aware of comments, arguments and evidence being presented in opposition to its application. The burden on commenters proposed in the NPRM—the cost of one additional copy and first class postage—is not unreasonable.

With respect to supplemented applications, the final rule provides that the 120-day review period be restarted with the filing of the supplement. It does not incorporate a commenter's suggestion that the clock be suspended while the supplement is being filed. Because the final rule provides for only one supplement, however, the prospect for extensive delay is largely eliminated.

On a related matter, the final rule does not incorporate a suggestion that notices of substantially complete applications specify any additional information required. This proposal misconstrues the concept of substantially complete applications, which is to assure that applications will be reviewed on their merits, even if not in strict technical compliance with all requirements of the rule. An application will not be considered substantially complete if the FAA considers additional information to be necessary for a decision.

Section 158.29 The Administrator's Decision (Proposed: Review and Approval Process).

As proposed, this section sets forth the standards for approval of an application and the contents of the Administrator's notice to the public agency of approval. Under the proposal, the Administrator would have approved an application only after a

determination there would be no excessive PFC collections, the project met the objectives and standards of § 158.17, and the application was substantially complete. The NPRM required public agencies to file an application to both impose a PFC and use PFC revenue on a project.

Comments: This provision of the NPRM generated very little comment. A comment from the financial community suggests the rule state that the Administrator's decision be binding and conclusive.

Final Rule: The paragraph of the NPRM dealing with this issue (§ 158.29(g)) has been replaced with a new § 158.29. This reflects the fact that public agencies have the option to seek approval for imposition of PFC's separately from approval to use PFC revenue. Somewhat different standards are provided for each type of approval. Paragraph (a) defines the standards for approval to impose a PFC, and paragraph (b) defines the standards for approval to use PFC revenue. However, when a public agency applies for concurrent approval to impose a PFC and use PFC revenue, the public agency must satisfy the requirements of both paragraphs before the Administrator will approve the application.

Under paragraph (a), the Administrator will approve an application to impose a PFC only upon determining that excess revenue will not be collected, and the preferred project is eligible. In addition, the collection process, including a request to waive the collection requirement for a class of carriers, must be determined by the Administrator to be reasonable, not arbitrary, nondiscriminatory and in accordance with the law. When the public agency has not sought concurrent approval to use PFC revenue, there must be alternative uses for PFC revenue in case the public agency's preferred project is not approved.

The first standards reflect statutory requirements. The next standard allows the Administrator to ensure that the public agency has adopted a fair classification system that does not unfairly favor any carrier or class of carrier. Under this standard, for example, a classification of on-demand Part 135 operators might be approved, whereas a classification of Part 135 operators that had served the airport 5 years or more probably would not. The last requirement regarding alternative projects ensures that approval to impose a PFC does not inexorably commit the FAA to permit the use of PFC revenue on a particular project. The proposed standard that the application comply

with the final rule's application requirements has been omitted. Because the Administrator will rule on the merits of all applications after at most one supplement, this standard is no longer necessary.

Section 158.29(a)(2) specifies the Administrator's notice of approval will list projects and alternative uses that may qualify for PFC financing, the PFC to be imposed, total approved PFC revenue, duration of authority and the earliest permissible charge effective date. The FAA considers this information relevant to the approval to impose a PFC. In particular, the specification of the earliest permissible charge effective date allows the Administrator to ensure carriers will be ready to begin collection on the public agency's charge effective date. It is expected that this issue will be discussed during the local consultation process. The Administrator will not specify the exact charge effective date because, under § 158.43, the charge effective date will depend on the date of the public agency's notice to carriers.

Paragraph (b) defines the standards for approval to use PFC revenue on an approved project. The Administrator will approve an application only after the determinations that there will not be excessive collections, that the project meets the statutory standards for use of PFC revenue, and that any project satisfies all applicable requirements with respect to FAA airspace determinations, ALP approvals and compliance with NEPA. The first two standards relate to the standards in the PFC statute. Once a specific project has been identified for PFC financing, it is necessary to assure that the specific project may be financed by PFC revenue under the statute and that PFC revenue will not exceed the allowable costs of that project. The latter standard assures that a public agency does not use PFC funds on a project until all requisite Federal approvals have been obtained. If the Administrator cannot verify that these requirements have been met, the application will be disapproved. Under § 158.29(b)(2), approval to use PFC revenue on any project will be considered approval of that project for purposes of the rule.

Paragraph (c) of this section specifies that the Administrator will give written notice when an application is disapproved. That notice will include the reasons for the decision. While the NPRM included notification of approval, notification of disapproval was inadvertently omitted. If a public agency files a new application following disapproval, it must comply with the

consultation and application requirements of the rule since it is likely a new application will involve some changes.

Section 158.31 Duration of Authority to Impose a PFC Following Project Implementation (Proposed Duration of Authority To Impose a PFC)

As proposed, this section would have allowed that a public agency to impose a PFC until it received the total approved PFC revenue, or the Administrator had terminated PFC authority under subpart E, or the public agency was determined to be in violation of relevant provisions of the Airport Noise and Capacity Act of 1990 and terminated the authority to impose a PFC thereunder.

Comments: Some commenters express concern that tying termination to receipt of total approved PFC revenue would be unduly burdensome to public agencies which had underestimated project costs and collected the amount of total approved PFC revenue before a project was completed or fully paid for. These commenters suggest termination be tied to collection of PFC revenue when they equal project costs. Some suggest public agencies be allowed to continue to impose the PFC and apply the PFC revenue to other approved projects.

Final rule: The proposed provision has been modified in three ways in the final rule. First, the final rule specifies that the public agency may impose a PFC until total PFC revenue plus interest equals the allowable cost of the approved project. This may require a public agency to revise its charge expiration date so revenue collected match allowable costs. This revision addresses the concern raised in the comments. The final rule does not explicitly provide for the continued imposition of a PFC to finance approved backup projects. If backup projects have been approved, under the terms of the rule, the public agency may use PFC revenue to finance these projects, and imposition could continue. However, the public agency must obtain specific approval to use PFC revenue for the backup projects. If authority to use the revenue on specific backup projects has not been obtained, the authority to impose the PFC would expire once the public agency had received sufficient PFC revenue and interest to pay for the costs associated with approved projects.

In the second change, this section of the final rule now explicitly applies only when a public agency has begun implementation of an approved project. New section § 158.33, addresses instances when a public agency has not

implemented an approved project in a timely fashion, and is discussed below.

The third change is in paragraph (c), referring to termination for noncompliance with provisions of the Airport Noise and Capacity Act of 1990. The final rule specifies that the authority to impose a PFC will be terminated for noncompliance with that law in accordance with the implementing regulations for that statute.

Section 158.33 Time Limits for Imposition of PFC Collection Before Project Implementation (No Corresponding Provision in NPRM)

This new section in the final rule sets forth the standards and procedures governing the loss of authority to impose a PFC for failure to implement an approved project. The NPRM included a proposal requiring projects begin implementation within 2 years after the public agency's proposed charge effective date, but it did not explicitly provide for the consequences if a project were not implemented.

The final rule provides for such circumstances. The FAA also determined that the final rule should address the duration of authority to impose a PFC before a public agency applies for approval to use PFC revenue and implements a project. This ensures that collections do not continue indefinitely without PFC revenue being put to use as contemplated in the statute. Airport comments are generally critical of the proposed 2-year accumulation period. A number of commenters propose that collection be permitted up to 5 years. Some propose initial authorization of up to 5 years with periodic progress reports to carriers and the FAA. The joint submission recommends initial authorization of 3 years with the possibility of seeking a 2-year extension, and even a 5-year extension. One major airport suggests advance collection should not have a set time limit. This airport would allow the public agency to schedule PFC imposition, accumulation of revenue, and use of PFC revenue to minimize financing costs. One industry trade association proposes an even shorter accumulation period.

The FAA determined that the 2 year accumulation period may be insufficient for major projects when a public agency imposes a PFC during the planning and formulation process. The final rule permits initial accumulation for 3 years before a public agency applies for approval to use PFC revenue. The public agency may seek an extension of up to 2 years following an abbreviated application process, but at the end of 5

years, it must begin project implementation.

The FAA recognizes that the ability to accumulate PFC revenue may ultimately reduce total project financing costs by reducing the amounts public agencies need to borrow. However, advance accumulation by its nature requires passengers to pay for facilities that they may never use. Therefore, a limit on accumulation is appropriate.

The FAA believes that the three-plus-two approach is a reasonable limit. Even if a major project requires 10 years to complete, the public agency should be well along in the planning process by the third year and should have progressed to the point of project implementation by the fifth year. In addition, this approach has broad support in the comments.

Under paragraph (a), a public agency may impose a PFC for up to 2 years after receiving approval to use PFC revenue before it implements a project. However, if it had obtained prior authority to impose a PFC, it must implement the subsequently approved project no later than 5 years after the charge effective date. Thus, a public agency that imposed a PFC and received approval to use a PFC 2 years after imposition could continue to impose a PFC for 2 more years before project implementation—a total of 4 years. In contrast, a public agency that did not receive approval to use PFC revenue until 4 years after it began imposing a PFC could continue to impose the charge for only 1 more year before project implementation—a total of 5 years.

If after 2 years (or 5, when appropriate) when the public agency has project approval and the Administrator believes sufficient progress has not been made toward project implementation, the Administrator will begin termination proceedings under subpart E. The use of subpart E procedures allows the public agency to take corrective action and should reduce, but will not eliminate, bondholders' uncertainties over abrupt termination of a PFC revenue stream.

The FAA anticipates that in virtually all cases arising under paragraph (a), the matter would be resolved through informal resolution. The FAA does not expect that questions of project implementation would progress to the hearing stage.

Paragraph (b) sets forth the time limits for imposition of a PFC before approval to use PFC revenue. The public agency may collect for up to 3 years before an application for approval to spend PFC revenue has been filed or a request for an extension has been filed under § 158.35. If an extension is authorized, the public agency may continue to

impose a PFC for only 2 more years unless it obtains approval to use PFC revenue. At the end of 3 years without an extension or project approval or 5 years without project approval and implementation of the project, the authority to impose a PFC will expire automatically.

In either case, it is doubtful that the public agency would have succeeded in obtaining debt financing based on PFC revenue without approval to use PFC revenue on an approved project. Therefore, the need to accommodate the financial community's concerns over sudden termination of PFC revenue streams should be less of a concern. In any event, the FAA has a statutory duty to prevent excess collections. In these circumstances, automatic expiration prevents the continued receipt of PFC revenue by the public agency without expenditure for the purposes intended by the statute.

The final rule also provides a mechanism for stopping collection of a PFC when authority has expired. The public agency must provide a list of carriers operating at the airport and other collecting carriers remitting to the airport in the previous 12 months. The FAA will notify these carriers of the expiration and the carriers will terminate collection within 30 days of the FAA's notification.

Finally, paragraph (e) provides that if authority to impose a PFC has expired, the Administrator will not grant new approval to reimpose the PFC until the project has been implemented. This provision will assure public agencies are not able to impose a PFC indefinitely by filing successive applications for authority to impose a PFC.

Section 158.35 Extension of Time To Submit Application To Use PFC Revenue (No Corresponding Section in NPRM)

This section sets forth the procedures for public agency requests for extension of authority to impose PFC's before receiving approval to use PFC revenue and implementing an approved project. The final rule provides for a more expedited local consultation and FAA review process than is required for initial approvals to impose a PFC or to use PFC revenue.

Paragraph (a) specifies that the public agency must provide notice in a local newspaper at least 30 days before submitting a request to the FAA and soliciting public comments. The notice must include progress to date, a revised schedule for obtaining project approval and reasons for delay.

Following public comment, but at least 120 days before the charge

expiration date, the public agency must submit the request to the Administrator accompanied by the following information: the information provided in the local notice; a summary financial report showing PFC revenue already collected plus interest and to be collected during the extension and any local funds expended for which reimbursement will be sought; a summary of any further consultation with carriers operating at the airport; and a summary of comments received in response to the local notice.

The final rule does not require further consultation with carriers before the request is submitted. The local notice and comment process will provide carriers with an opportunity to register their views. In addition, full consultation is required before submitting the application for authority to use PFC revenue. However, a public agency may always engage in additional carrier consultation if it so chooses. A summary of such consultation must be included with the request.

The Administrator will approve the application upon determining that the agency has shown good cause for the delay in applying for approval to use PFC revenue; the revised schedule is satisfactory; and further collections will not result in excessive PFC revenue. The Administrator will decide on the request and provide written notice to the public agency within 90 days after the request was received.

Section 158.37 Amendment of Approved PFC (Proposed: Amendment of Approved PFC)

Under the NPRM, a public agency would have followed one of three courses in requesting an amendment to an approved PFC. If the public agency wished to decrease the level of the PFC without any appreciable change in the nature or scope of the project, no consultation with air carriers and no justification would have been required. If the amendment would have increased the PFC level, resulted in an incidental change in the project scope and increased the amount of PFC revenue used on the project by less than 15 percent, the public agency would not have been required to consult with air carriers, but would have been required to justify the amendment in writing to the appropriate FAA Airports office. More extensive amendments would have required consultation and any other information requested by the Administrator. The NPRM also proposed that the Administrator's review process would provide public notice and

opportunity for comment only for the most extensive category of amendments.

Comments: Over 20 commenters responded to this proposal in the NPRM. Although one finds the proposed amendment rule to be acceptable, about half of all commenters claim that it would be too burdensome and time consuming. Many add that the process proposed would adversely affect bond financing, unnecessarily delay projects, and limit the flexibility that public agencies need to deal with changing circumstances during the course of a project.

A number of commenters suggest that the criteria that would have been used to determine approval be spelled out, and that the final rule provide definitions of changes "incidental" to the project or changes in the "scope" of the project. Several ask that the threshold for cost increases requiring carrier consultation be raised from 15 percent, as was proposed, to 25 or 30 percent. Others suggest that no approval be required for amendments unless the carriers object, and some propose that the rule require only notification to the FAA and carriers upon a decision by a public agency to amend a PFC-financed project. One feels that there should be no threshold below which carriers consultation should not be required.

Some commenters question whether the FAA can initiate or require an amendment to an approved PFC by a public agency. Others express concern that, should an application for an amendment be disapproved, it not adversely affect the original PFC, and another proposes that there be an appeal process in the event that an application to amend is disapproved. Only one commenter urges that the rule specify a more expeditious review and approval process, to be completed in 30 to 45 days. Other comments suggest that the FAA consider suspending imposition of a PFC if the amendment is inconsistent with the original project, and that approval of an amendment be categorically excluded under NEPA.

Final rule: The FAA understands that most public agencies would like additional flexibility to modify approved projects, increase or decrease the PFC level, and otherwise respond promptly when financial or technical changes in a project are necessary. The final rule adopts a number of changes suggested by commenters which liberalize the requirements for obtaining an amendment. The requirement for FAA approval of an amendment is retained, however, to help ensure that future PFC revenue is used for eligible projects and that the costs of a PFC-financed project are limited to those which meet the

"reasonable and necessary" criteria in the definition of allowable cost.

Under § 158.37(a) in the final rule, a public agency may decrease the level of PFC collected, decrease the total amount of PFC collected, or increase the total amount of PFC collected by 15 percent or less by simply notifying the collection carriers and the FAA in writing. Any new charge resulting from a change in the PFC level will be effective on the first day of a month which is at least 60 days from the date of notification to the carriers. For example, if the public agency notifies the carriers on the fourth of August that the PFC will decrease from \$3 to \$2, the effective date of that change is the first of November.

If a public agency wishes to amend an approved PFC project by increasing the PFC level, the total amount of PFC revenue collected by more than 15 percent, or by materially altering the scope of the project, it is subject to slightly more rigorous requirements. If such is the case, the agency must consult with air carriers and foreign air carriers and provide the FAA with written evidence of that consultation and the justification for the requested amendment. The Administrator may also request additional information if needed to fully evaluate the request.

If the carriers agree with the public agency's requested amendment, it will be effective 30 days after the FAA receives the application, unless notified otherwise. Any new charge resulting from the amendment will be effective on the first day of a month which is at least 60 days from the time of notification to the carriers, as discussed above.

If the carriers disagree with the requested amendment, the FAA will review the information submitted, including any reasons given by air carriers for opposing the amendment. The FAA will approve or disapprove such requests within 120 days of receipt of the application, allowing for such consultation, public notice and opportunity for comment as may be appropriate.

The consultation and review procedure outlined above will also apply to any request for approval of a new class of air carrier to be designated, or modification of any previously approved class, under § 158.11.

Although a number of commenters urge that amendments be automatically approved, or that they be approved unless the carriers object, the final rule retains the option to disapprove an amendment, even though the air carriers may not oppose it. This is, in part, to protect the interests of the passengers who ultimately pay the PFC's to fund the project, and, in part, to ensure that

project costs do not exceed what are considered reasonable and necessary for the accomplishment of the project.

The statute establishes the authority for the Secretary of Transportation, through the FAA, to approve or disapprove the imposition of PFC's and the use of PFC revenue; approval or disapproval of a subsequent amendment is simply an extension of that authority.

The final rule establishes no specific requirements regarding environmental, ALP or airspace studies solely related to an application to amend an approved PFC or PFC-financed project. This is largely due to distinction between approval to use PFC revenue to pay the estimated costs of a specific project and approval to use more or less revenue to cover the actual costs of that project. Such amendments would almost always be within the scope of the project as it was defined in earlier studies. If the amendment would put the project outside the scope of that definition, or constitute an essentially new project, the appropriate NEPA reviews, as well as other studies, would be mandated.

The final rule does not refer to "incidental" changes to the project, but it retains the concept, suggested in the comments, of materially altering the project "scope." This term, although it may be insufficiently precise for some, is suggested by the joint industry commenters who would be most likely to be involved in any dispute arising over a proposed amendment. In addition, the FAA intends to apply a standard to this term which would include a quantitative increase in the project (e.g., increasing the length of a PFC-financed taxiway), but would not include amending an approved taxiway construction project to allow extension of a runway. Such changes would require that the additional project be included in a previously approved application to use PFC revenue, or that it be the subject of a newly filed application to use PFC revenue.

The final rule provides no specific appeal procedure for a public agency in the event an application for amendment, or an original application, is disapproved. The agency may, of course, refile an application at any time. The disapproval of an application for amendment will not affect the validity of any previous PFC-related approval. In addition, the final rule does not provide that disapproval of an application for an amendment result in suspension of authority to impose an approved PFC. Provisions for termination of that authority are provided in subpart E of the final rule in the event that such a course of action is necessary.

Section 158.39 Use of Excess PFC Revenue (Proposed: Use of Excess PFC Revenue)

Because this section was geared toward concurrent approvals for imposing a PFC and using PFC revenue, it provided only for the use of excess revenue after receipt of approved PFC amounts. Accordingly, it proposed to require public agencies to notify carriers to stop collecting when PFC revenue equalled the amount of total PFC revenue approved. In addition, it specified that any excess revenue be reserved for future eligible projects. However, it did not provide a mechanism to assure that the excess revenue were used as required.

Comments: The comments generally support the NPRM's approach, although they note some concerns. A number of airport operators are concerned that tying the requirement to stop collecting PFC's to the amount of approved PFC revenue did not allow for incorrect prediction of estimated project costs. In addition, some commenters express concern that the proposed rule did not explicitly provide for the use of PFC revenue required to meet debt coverage requirements over and above payments of principal and interest.

Commenters, including the joint submission, also suggest that excess PFC revenue be used to retire existing PFC-backed bonds or to issue new bonds.

Other comments propose additional related uses for excess PFC revenue such as applying the excess revenue to the Federal share of projects undertaken by the public agency or distributing the excess to general aviation, small hub and non-hub commercial airports under AIP formula.

One commenter proposes that excess revenue be held in reserve without penalty or termination.

Final rule: The final rule defines excess revenue in terms of approved PFC amounts in § 158.31, as described above, and in a revision to the NPRM language on use of excess revenue. Under § 158.31, the duration of authority to impose is tied to receipt of PFC revenue equal to allowable costs, not total approved PFC revenue. Excess revenue is now defined in § 158.33 as revenue, plus accumulated interest thereon, exceeding allowable project costs. When revenue collected to satisfy bond coverage requirements creates excess revenue, that revenue may be used for approved projects.

A new paragraph (c) provides for the use of accumulated revenue received before authority to impose a PFC lapsed due to failure to implement an approved

project. In any case, excess PFC revenue must be used on approved projects, including retirement of existing PFC-financed debt.

Under new paragraph (d), the public agency must, within 30 days after authority to impose the PFC has terminated or expired, present to the FAA a plan for using unspent PFC revenue. If the public agency does not present the plan, or the plan is unacceptable, the Administrator will start proceedings to offset AIP entitlement funds under subpart E. The PFC statute authorizes offset of AIP entitlement funds as one means to cure excess collections. Under this provision, PFC revenue cannot be held indefinitely without penalty. To permit a public agency to do so would be contrary to the statutory intention that PFC revenue be applied to projects that enhance the safety, capacity, security, and competitiveness of the national air transportation system or that mitigate adverse noise effects of airport operation. The final rule does not provide for use of excess PFC revenue as part of the Federal share of specific grant-eligible projects or for redistribution to other airports. PFC revenues are local funds, not Federal funds. The FAA can find no basis in the statute for distributing them to other airports or for applying them to the Federal share of specific AIP projects. However, as discussed above, the FAA will start proceedings to offset apportioned Federal financial assistance as provided by the statute if the public agency does not commit to using the accumulated PFC revenue.

Subpart C

Subpart C specifies requirements for providing notice of the imposition of PFC's, and for collecting, handling and remitting PFC's. This subpart has been 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 Collect PFC's (Proposed: Public Agency Notification To Air Carriers and Foreign Air Carriers)

As proposed, this section would have required each public agency that had been granted authority to impose a PFC to give written notice to the carriers and foreign air carriers operating at the airport. The carriers would then be responsible for notifying their agents, including other issuing carriers, of the requirement to collect and the effective date to begin collection. As proposed, the effective date of the PFC would be

no sooner than 30 days after notification.

Comments: Commenters suggest all notices of approval to impose PFC's appear in the Federal Register. These commenters also want some provision for notification for any subsequent amendment to the amount of PFC collected. Commenters suggest that the public agency be required to give more than an "estimated" charge expiration date, because public agencies would be unable to forecast the exact date to stop collecting the PFC. Some commenters, including the joint submission, also want the FAA to set up and maintain a PFC clearinghouse and publish a monthly report that would list any PFC's approved in that month and any relevant EAS information. Travel agents note the absence of specific requirements for notifying the CRS vendors or travel agents, and suggest that FAA provide a mechanism for such notification.

Final rule: Under the final rule, those carriers required to collect the PFC are provided notice of collection levels, the total revenue to be collected and the charge effective date. This date must be at least 60 days from the date the public agency notifies the carriers and must be on the first day of a month. This should provide sufficient time for carriers to arrange collection procedures.

A public agency must notify the carriers required to collect the PFC of any amendment to the total amount of PFC revenue being collected or the level of PFC imposed, and the word "proposed" has been added to "expiration date" to recognize that this date is proposed. Each carrier will be responsible for notifying its agents, including travel agents.

Section 158.45 Collection of PFC's on Tickets Issued in the United States (Proposed: Collection of PFC's)

This section as proposed contemplated that the issuing carrier, upon notification, would be required to collect a PFC on all air travel tickets sold on or after the charge effective date. The ticket would be required to show the PFC imposed at each airport and the total PFC paid by each passenger. As required by statute, no PFC's would be collected after the passenger has paid two charges on a one-way trip (or two in each direction of a round trip) and no PFC may be collected when the passenger is being provided air service for which essential air service (EAS) compensation is being paid. The NPRM also stipulated a PFC could not be collected when a passenger's travel to an airport charging

a PFC is the result of an involuntary change in a passenger's itinerary. All PFC's would be collected and remitted by the issuing carrier as noted on the ticket, thus eliminating the need for interline settlements.

Comments: The issue drawing the most attention in the comments was the determination of one-way and round trips for the purpose of determining which airports in a passenger's itinerary are entitled to receive PFC revenue. The joint submission recommends that PFC's only be collected at the first four airports where PFC's are imposed without regard to whether the itinerary was a round trip. They argue this is the simplest and least expensive way for the carriers to redesign their systems, and would also be the least confusing to passengers. Recognizing that statutory requirements could prevent the adoption of this proposal, the joint submission offers an alternative under which the PFC would be assessed at the first two airports and the last two airports on a passenger's itinerary at which a PFC is being imposed. Although the second alternative presented is more costly than the first, the joint submission supports the adoption of either of these alternatives.

Most commenters agree with the NPRM that, in the event of an involuntary change in a passenger's itinerary not requested by the passenger, the PFC's should be remitted to the airports on the original ticket itinerary. Conversely, for voluntary changes requested by the passenger, the commenters support assessing the PFC. However, they recommend limiting refunds or new PFC's to those cases in which there is an adjustment made to the amount paid by the passenger.

Another major issue was the treatment of foreign carriers. The comments from individual foreign carriers and from IATA request that foreign carriers be exempt from collecting and remitting PFC's. Commenters indicate that some countries prohibit the collection of foreign taxes. The PFC, they contend, would be considered such a tax. (While carriers already routinely collect customs service inspection fees, the airline ticket tax, and other such charges, these commenters claim this is done on a "voluntary" basis.)

Some comments from individual airports indicate that there should be a penalty for carriers that refuse to collect or remit PFC's.

Final rule: The first change is in the title. Because of the comments received on the treatment of foreign air carriers and on tickets issued outside the U.S., the final rule addresses these issues in

two different sections. Upon notification by the public agency, the collecting carriers will be required to collect PFC's on all tickets issued in the U.S. on or after the charge effective date. The appropriate charge is the PFC in effect at the time the ticket is issued.

The PFC's collected will reflect a passenger's itinerary at the time of issuance. Any changes in itinerary initiated by a passenger that require an adjustment to the amount paid by the passenger are subject to collection or refund of PFC's.

Each air travel ticket must show the total amount paid by the passenger for PFC's and each airport for which the PFC is collected. For each one-way trip, a PFC may only be collected for the first two airports where PFC's are imposed. For each round trip, a PFC will be collected only for enplanements at the first two airports and the last two enplaning airports where PFC's are imposed. This assures that PFC's will be collected from passengers on both directions of a round trip and not more than four charges will be made.

The rule requires that no PFC can be collected from a passenger on any flight to an eligible point on an air carrier that receives essential air service compensation on that route.

Carriers and their agents must stop collecting PFC's on the charge expiration date that is specified in a notice from the public agency or as required by the Administrator.

The FAA has not included in this section any penalties for carriers for non-collection of PFC's. However, carriers are subject to the same penalties for violations of this rule as for any other violation of FAA regulations.

Section 158.47 Collection of PFC's on Tickets Issued Outside the U.S.
(Proposed: No Previous Section)

This is a new section of the rule, created in response to the comments received from individual foreign carriers and from IATA requesting special treatment for foreign carriers.

No foreign air carrier is required to collect a PFC on tickets written on its own imprinted ticket stock unless it serves a point or points in the U.S. Under this section, an air carrier or foreign air carrier that issues tickets outside the U.S. has three alternatives. (1) It may follow the procedures for tickets sold in the U.S. as set forth in § 158.45. (2) It may collect the PFC's for the passenger's U.S. departure gateway at the time of ticket issuance outside the U.S.; or (3) It may collect the PFC from the passenger at the time the passenger is last enplaned in the U.S. Foreign and domestic carriers are given equal

flexibility for tickets issued outside the U.S.

If a carrier chooses not to follow the procedures in § 158.45, it is only required to collect PFC's for public agencies controlling the last airport at which the passenger is enplaned prior to departure from the U.S. Some commenters complain that foreign air carriers would be unable to keep track of different PFC levels and imposing airports. However, the FAA believes that no such burden exists at an airport directly served by the carrier. Whenever the PFC is collected, the collecting carrier must give a written indication, but not necessarily printed on the ticket, that such PFC has been paid. The same procedures discussed in § 158.45 concerning changes in itinerary initiated by a passenger are also applicable in this section.

Those air carriers and foreign air carriers that elect to collect the PFC at the time of issuance are not required to make separate provision to collect PFC's at the airport for tickets sold by other air carriers or foreign air carriers or the agents of such carriers. While this will reduce PFC revenue received by the passenger's departure airport, the FAA believes it is not reasonable to require carriers to establish two different PFC collection systems. Those carriers that collect the PFC at the gateway airport must examine the ticket of each enplaning passenger and collect the PFC from any passenger whose ticket does not indicate that the PFC was collected at the time of issuance. As in § 158.45, collected PFC's shall be distributed as indicated to the passenger, and collecting carriers and their agents shall stop collecting the PFC on the charge expiration date included in a notice from the public agency or the Administrator.

Section 158.49 Handling of PFC's.
(Proposed § 158.47)

The NPRM proposed that 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 (GAAP).

Comments: Many of the comments indicate that using GAAP is inappropriate; that GAAP is for the presentation of information in financial statements and not for accounting purposes. Instead the commenters recommend that the FAA require only that carriers maintain a financial management system that establishes accountability of the funds.

Other comments on this section focus on how carriers should treat the funds

they collect for the public agencies before remittance. Several individual airports urge the FAA to require carriers to establish separate escrow accounts in which to hold PFC revenue pending remittance to the public agency. Bond rating agencies and other financial entities ask the FAA to regulate the type of investment instruments in which the air carriers and foreign air carriers could invest PFC revenue. These commenters express concern that the holders of bonds backed by PFC revenue would not be protected if the carriers could invest in high-risk, high yield investments, and suggest that all PFC revenue be aggregated in separate trust accounts with strict stipulations on the type of investments allowed. These commenters are particularly concerned that, in the event of a carrier's bankruptcy, PFC revenue would become subject to bankruptcy proceedings and the public agency would be denied access to the funds. Individual carriers, on the other hand, indicate that such an accounting system would be an unnecessary and expensive administrative burden.

The joint submission suggests that the carriers: (1) Be allowed to commingle PFC revenue with other revenue but treat PFC's as trust assets of the public agencies in which the carriers hold only a possessory interest and not an equitable interest; (2) be required to disclose the existence and amount of funds subject to the PFC trust in any financial statements; and (3) be required to place PFC revenue in a separate trust fund promptly if the carrier misses a payment or payments to the public agency without a satisfactory justification to the Secretary. The joint submission also suggests that the Secretary may decide that it is sufficient to issue a notice to the carrier to remit the revenue promptly and meet future payment deadlines or face further action.

Final rule: Instead of requiring the use of Generally Accepted Accounting Principles, the final rule provides that collecting carriers must maintain their financial management systems in accordance with the Department of Transportation's Uniform System of Accounts and Reports, which are contained in 14 CFR part 241. Those carriers not subject to Part 241 must establish and maintain an accounts payable system to handle the PFC revenue.

The FAA adopted the commenters' suggestion on how to handle the PFC revenue between collection and remittance. The rule allows the carriers to commingle the PFC revenue with

other sources of revenue, but the carriers must regard the PFC revenue as trust funds held for the beneficial interest of the public agencies imposing the PFC. This is revenue in which the carriers hold only a possessory and not an equitable interest. The carriers must also disclose the existence and amount of these funds subject to the PFC trust in any financial statements. The final rule does not impose investment requirements on PFC revenue. Such a requirement would interject the Federal Government too deeply into management of local funds. Moreover, the final rule provides for additional carrier compensation, thus reducing the likelihood of carriers investing PFC revenue in risky high yield investments.

Section 158.51 Remittance of PFC's. (Proposed: § 158.49)

The NPRM proposed that revenue collected by the issuing carrier or its agent within the first 15 days of a month would be remitted by the fifteenth day of the following month. Revenue collected within the second half of the month would be remitted by the end of the following month. Thus, an air carrier would be allowed to retain the PFC revenue for a maximum of 45 days and funds would be remitted to the public agency twice a month.

Comments: Overwhelmingly, commenters think such remittance is excessive and overly burdensome. Some individual airports support twice-monthly remittance and some individual carriers suggest quarterly remittance. The joint submission recommends monthly remittance, 30 days after the end of the month in which the PFC was collected.

Final rule: The carriers shall submit the PFC revenue to the public agency on a monthly basis no later than the last day of the following calendar month.

Section 158.53 Collection Compensation

The NPRM provided for carriers to retain any interest they may earn on PFC revenue from time of collection to time of remittance as compensation for the administrative costs associated with collecting, handling, and remitting PFC's.

Comments: Most carriers claim that the float, expected to be about \$0.03 per PFC, is inadequate to cover their expected costs. Although total cost figures differed, they reflect a carrier's level of automation for administrative and accounting processes, with the most automated carriers incurring the greatest start-up costs but lesser on-going costs. Each carrier commenting on this issue submitted statements that costs could not be recovered by the float mechanism

alone. Of the comments submitted by the carriers, the FAA received varying amounts of information on how the carriers estimated the costs of the PFC program. In particular, the FAA notes that no useful data was received from foreign carriers to support their claim that their costs are higher than those of U.S. carriers, or, indeed, to give any indication of what their costs might be. In the absence of such data, and without any other basis for a different conclusion, the FAA concludes that the cost of PFC collection is likely to be similar among carriers of similar size and levels of automation. Accordingly, the agency further concludes that there is no basis to believe that such costs would significantly alter the average of reasonable and necessary costs, which must be the basis of any uniform charge under the statute. Some of the individual airports comment that the float should be adequate to cover the administrative costs of PFC's. The joint submission agrees that the float would not be adequate compensation but could not agree on or recommend an appropriate level of compensation.

Final rule: The quantitative data submitted to the docket was examined to determine the average necessary and reasonable costs necessary to compensate the industry. The FAA also attempted to adjust the carriers' cost estimates to reflect the requirements of the final rule. The data reveal variation from carrier to carrier. For example, carriers with the most complete automation of the ticketing and revenue accounting functions generally projected higher start-up costs than those with less automation. However, the operating costs of the more fully automated carriers are projected to be lower.

The statute requires collection compensation to reflect carriers' average costs. By definition, such an average cost figure will not fully reflect all of the variation among individual carriers. However, the FAA has carefully reviewed the data available and is satisfied that collection compensation provided in the final rule is a reasonable assessment of carriers' average costs based on that data. In addition to retaining the interest it may earn on PFC revenue from time of collection to time of remittance, the collecting carrier will be entitled to retain \$0.12 of each PFC remitted on or before June 28, 1994. Thereafter, air carriers will be entitled to retain \$0.08 of each PFC. The higher compensation in the early years of the program is intended to allow carriers to recoup start-up costs in a more timely fashion. The FAA encourages cooperative efforts among

representatives of airports and air carriers to ascertain any future need for changes to this compensation level. We are particularly interested in methods for determining the appropriate fee without extensive ratemaking-type analysis by the FAA.

Subpart D

Subpart D specifies requirements for reporting, recordkeeping and auditing by the collecting carrier and the public agency. This subpart has been revised to minimize requirements while providing adequate information to protect each party.

Section 158.63 Reporting Requirements: Public Agency

As proposed, this section would have required each public agency to report within 30 days of work beginning on a project and any substantial deviation from the estimated project schedule. It also proposed reporting costs and the agency's proposed corrective action, 60 days advance notice of project completion and receipt of 90% of total PFC revenue.

Comments: A number of commenters state it is impossible to know precisely 60 days in advance when project completion would occur and want the FAA to define "substantial deviation from the estimated project schedule." Many comments, including the joint submission, claim the reporting requirements are burdensome and recommend public agencies be required instead to submit regular progress reports or quarterly reports to the carriers. Two commenters recommend the public agency report any changes in its aircraft operating rules as they apply to the use of Stage 2 equipment. The later is a reference to requirements in the Airport Noise and Capacity Act of 1990 to local restrictions on the operation of Stage 2 and Stage 3 aircraft. See the FAA's NPRM (56 FR 8644; February 28, 1991).

Final rule: The public agency will provide quarterly reports to carriers collecting PFC's for the public agency, with a copy submitted to the appropriate FAA Airports office. The report will include PFC revenue received from collecting carriers, interest and expenditures for the quarter and cumulatively, current project schedule and the amount committed for use on projects already approved. The commenters believe the quarterly report will provide the carriers and the FAA with the sufficient information for oversight of PFC revenue. This section also includes a new requirement for airports enplaning 0.25 percent or more of the total annual enplanements. The

public agency controlling such an airport must provide FAA with an estimate of PFC revenue to be collected in the next fiscal year. This must be done by August 1st of each year, so the FAA can determine the reduction in AIP apportionment levels for these airports for the subsequent fiscal year.

This section does not require the public agency to report any changes in its aircraft operation rules as they apply to the use of Stage 2 equipment. This would be a burdensome requirement; only those actions not in compliance with 9307 and 9304(e) of the Airport Noise and Capacity Act (ANCA) would affect imposition of the PFC. As noted above, the FAA has proposed regulations to implement the ANCA, including actions necessary to counter illegal restrictions.

Section 158.65 Reporting Requirements: Collecting Carrier. (Proposed: Reporting Requirements: Issuing Carrier)

As proposed, this section would have required each issuing carrier collecting PFC's for a public agency to file quarterly reports to the public agency, unless otherwise agreed. The reports are to provide an accounting of funds collected and funds remitted to the public agency. The reports were to identify, by airport and air carrier, the total passengers enplaned, the passengers exempt from collection because of the EAS limitation (§ 158.9), limitations per one-way trip (§ 158.11), limitations regarding involuntary change in itinerary, and the number who were exempt due to purchase of tickets before the charge effective date. The report was also to identify any PFC's collected and remitted, but subsequently refunded to passengers due to changes in itinerary initiated by passengers.

Comments: Most commenters support the concept of quarterly reports, but several recommend monthly reports to accompany remittance of PFC revenue to the public agency. A number of commenters state the report needs to show only the amount of PFC's collected, the amount refunded, and the amount reimbursed. Carriers state that it would be nearly impossible to reconcile monthly passenger enplanements and revenue. One carrier states that only by collecting itinerary information from all passengers would a carrier be able to identify the enplaned passengers exempt from the PFC, and that, today, carriers collect complete itinerary data for only 10 percent of passenger itineraries. Some commenters recommend relaxed requirements for foreign carriers, and others recommend

an annual report for carriers carrying a limited number of PFC passengers.

Final rule: The reporting requirement has been simplified. Unless otherwise agreed to by the collecting carrier and the public agency, reports will be required to include the collecting carrier and airport involved, the total PFC revenue collected, the total amount of PFC revenue refunded to passengers, and the amount of revenue withheld by collecting carriers from the 12-cent or 8-cent fee for compensation and the total amount remitted to the public agency. The carrier does not have to report earnings from interest gained on PFC revenue between collection and remittance to the public agency. The FAA believes that the revised reporting requirements are not burdensome, will provide public agencies with necessary information in a timely fashion, and should be required of all carriers collecting a PFC.

Section 158.67 Recordkeeping and Auditing: Public Agency

As proposed, this section would have required that each public agency keep unliquidated PFC revenue on deposit in an interest-bearing account. Revenue and interest earned was to be used to pay the allowable costs of the PFC-funded project. The public agency would have been required to establish and maintain for each approved application, a separate accounting record including revenue received and amounts expended on the project. Each public agency would have been required to provide for an independent audit at least annually of each project.

Comments: A number of commenters state that while airports should be required to account for PFC revenue separately, they should not be required to segregate those revenue in separate accounts. The consensus of comments is that it would be unnecessarily onerous to require independent audits for each PFC funded project. Many commenters believe the auditing requirements are too burdensome and costly and recommend that the public agency be allowed to provide for an audit under the Single Agency Audit Act as used for AIP projects, allowing for a combined audit for all PFC projects at the airport. Public agencies also want to recover auditing costs of PFC revenue as a part of the project cost. One commenter questions the purpose for requiring the public agency to provide copies of its audits to air carriers upon request. A number of commenters request that the term "unliquidated PFC revenue" be defined.

Final rule: The final rule continues the requirement to keep any unliquidated PFC revenue on deposit in an interest-bearing account, but adds that it may be deposited in other interest-bearing investment instruments used by the public agency's airport capital fund. Thus, PFC revenue may be commingled with other public agency airport capital funds. While a segregated PFC account is not required by the rule, an amount equal to the PFC revenue remitted by carriers and any interest earned must be retained in an airport's capital account until used on an approved project.

The auditing requirements in the final rule have been reduced to limit the cost while still ensuring that the public agency adequately protect PFC revenue. The audit shall be performed by an accredited independent public accountant who shall express an opinion of the fairness and reasonableness of the public agency's procedures for receiving, holding and using PFC revenue, and shall express an opinion on whether the quarterly reports required in § 158.63 fairly represent the net transactions within the PFC account. As requested by a number of commenters, public agencies can provide for an audit under the Single Agency Audit Act as used for AIP projects, as long as PFC projects are specifically addressed by the auditor.

The rule continues to require that public agencies provide copies of their audits to air carriers upon request and to provide carriers with the assurance that the funds they collect for the public agency are being properly used and adequately accounted for. Air carriers must also provide public agencies with a copy of their audits upon request. Public agencies can recover auditing costs of PFC revenue as a part of the allowable project cost. The term "unliquidated PFC revenue" has been defined in subpart A.

Section 158.69 Recordkeeping and Auditing: Collecting Carrier (Proposed: Recordkeeping and auditing: Issuing Carrier)

As proposed, this section would have required that issuing carriers establish and maintain for each public agency for which they collect a PFC an accounting record of PFC revenue collected, remitted and refunded. The accounting record was to identify the airport and carriers on which passengers were enplaned at the airport. Carriers were required to provide an independent audit of the PFC account annually and provide copies to each public agency upon request.

Comments: Carriers comments recommend that the amount of PFC revenue collected be recorded by airport

and not include enplanement data by airline. A few commenters recommend allowing carriers to aggregate all airport accounts with fewer than 100 passengers per year into a single account. The general consensus of the carriers' request on audits is that the requirement be limited to focusing on whether the proper procedures are in place to ensure that the best effort is made to remit and report the fees due. A number of commenters object to the requirement for annual independent audits, because it would require a significant amount of work and expense. They recommend that the audit cover the PFC account of the carrier and not be a separate audit for each public agency for which the carrier collects a PFC. Smaller carriers and foreign carriers seek relaxed audit standards, with foreign carriers stating that the audit requirement would be difficult to enforce outside the U.S.

Final rule: Both recordkeeping and audit requirements have been revised as a result of the comments. All carriers are required to establish and maintain for each public agency for which they collect a PFC an accounting record of PFC revenue collected, remitted, and refunded, and the compensation retained from the 12-cent or 8-cent fee. As recommended in the comments, the record must identify the airport at which a passenger actually enplanes but there is no requirement to identify the carrier transporting the passenger.

The rule requires that a procedural audit be performed by an accredited independent public accountant who shall express an opinion of fairness and reasonableness of the carrier's process for accounting, collecting, holding, and remitting PFC revenue. The opinion would also address whether the quarterly reports required in § 158.65 fairly represent the net transactions of the PFC account. The audit is for the PFC account of the carrier; the rule does not require a separate audit for each public agency for which the carrier collects a PFC. The audit would only apply to PFC revenue once it has been paid to the carrier, either by the passenger or by an agent of the carrier. The rule does not require carriers with fewer than 50,000 PFC passengers a year to perform an audit, because the cost of the audit could exceed the carrier's collection fee. In those cases where an audit may be necessary for those carriers not providing an audit, it would be performed by the Administrator, the Secretary, or the Comptroller General as provided in § 158.71. Upon request, a copy of the audit must be provided to the public agency for which a PFC is collected.

Section 158.71 Federal oversight (Proposed: Federal Recordkeeping and Auditing Oversight)

As proposed, this section provided for periodic audit and/or review of the collection and remittance of PFC revenue by carriers and of the use of PFC revenue by public agencies. Audits and reviews could be performed by the Administrator, the Secretary, or the Comptroller General to ensure compliance with this regulation.

Comments: Commenters generally did not object to the proposed requirements in the NPRM. One airport comments that any requirement beyond an independent audit is an inefficient use of government and industry resources.

Final rule: The rule retains the requirements in the NPRM, providing for periodic review and/or audit of both the public agency and the carriers. While the FAA expects to rely primarily on the audits performed for the air carrier and public agency, the statute calls for direct Federal audit and review. This provision is particularly important since carriers collecting less than 50,000 PFC's annually are not required to provide for an independent audit.

Subpart E

Subpart E provides for termination of PFC authority when the Secretary determines revenue is not being used in accordance with this regulation. It also allows for a reduction in a public agency's AIP funds to ensure compliance with this regulation.

Section 158.83 Informal resolution (New Section)

The NPRM proposed that the Administrator may enter into informal resolution with the public agency if, after review under § 158.71, there were concerns that PFC revenue was not being used in accordance with this regulation or with section 1113(e) of the FA Act. Under the final rule informal resolution will be attempted in each case.

Comments: Carrier comments generally support the proposed termination process but a number of commenters from airports and financial institutions express concern about the Administrator's ability to terminate PFC collection. According to the commenters, the ability to terminate could complicate the use of bonds backed by PFC revenue. These comments claim the perceived risk of termination would require bonds to be issued at higher rates of interest. Commenters recommend limiting the ability of the Administrator to terminate PFC's, including a requirement of informal

resolution, before a more formal process is instituted.

Final rule: The final rule requires the Administrator undertake informal resolution with the public agency to attempt to solve any concerns before a formal process is begun. Other changes in the termination procedure made in response to public agency and financial market concerns are discussed below.

Section 158.85 Termination of Authority To Impose PFC's (Proposed § 158.83)

If informal resolution was not successful, the NPRM proposed a process to begin proceedings to terminate PFC authority. The Administrator was required to publish a notice of proposed termination in the *Federal Register*, including the basis for the proposed action, and any corrective action the public agency could take. The proposed date for comments and corrective action would have been 30 days after the notice. If requested by the public agency, a hearing would have been held prior to the Administrator's final decision. The Administrator would then publish a notice of the final decision in the *Federal Register*. The decision could be to terminate the authority to impose a PFC in whole or in part or to allow full continued authority.

Comments: Airports and financial institutions are concerned with the uncertainty associated with FAA's unilateral ability to terminate PFC authority. Airports state that the uncertainty would result in greater debt costs, ultimately resulting in higher project costs. Representatives of the financial community question the ability to finance a bond if PFC authority is terminated. These commenters argue that continuity of PFC revenue pledged against debt service is essential, and termination should occur only after all other courses of action have been exhausted including AIP offset. If termination is required, it should come only after informal resolution as well as a public hearing, with specific time frames for each step of the process. Some commenters suggest PFC authority should not be terminated if PFC revenue is pledged to a bond until the bond is liquidated. Some commenters recommend disapproval of future amendments or authority to impose new PFC's rather than termination. A number of commenters also recommended this section include termination for violation of sections 9304(e) and 9307 of the Airport Noise and Capacity Act.

Final rule: The final rule retains the Administrator's ability to terminate PFC authority. This authority is provided for in the statute. However, the process has

been revised significantly to assure all parties that every effort would be made to resolve a problem before formal termination. A process that will last a minimum of 130 days is required before the Administrator can terminate PFC authority. In addition to a mandatory attempt at informal resolution as provided in § 158.83, the rule continues to require the Administrator to publish a notice of proposed termination, but allows for no less than 60 days rather than 30 for corrective action. If corrective action is not taken, the Administrator will provide the public agency with an opportunity to be heard. This hearing will be in a form and manner appropriate to the circumstances, and will occur after at least 30 days following a second notice in the *Federal Register*. The Administrator will then publish a third notice in the *Federal Register* of the final decision, and any prescribed corrective action that is still possible. If corrective action is still possible, the public agency will also have an additional 30 days to take the corrective action before the Administrator notifies carriers to discontinue collection.

The rule has not adopted the recommendation that a public agency be permitted to continue to receive PFC revenue in violation of this regulation if it has pledged the PFC revenue to bond payments. The FAA believes that it is inappropriate for the passenger, rather than the bond holder, to incur the risk for the bond. Moreover, the public agency's choice of a method for financing a project cannot be a basis for limiting that agency's duty to carry out the requirements of the statute.

Section 158.87 Loss of Federal Airport Grant Funds (Proposed: § 158.85)

As proposed, this section would have allowed the Administrator to reduce the public agency's AIP funds if PFC collection were excessive or if PFC revenue were not being used as approved.

Comments: As discussed earlier, many commenters believe AIP funds should be reduced rather than allow the Administrator to terminate PFC authority. An industry group commented that FAA should not be able to reduce future AIP funds without a public hearing.

Final rule: The final rule retains the Administrator's ability to offset AIP funds if PFC revenue are not used appropriately rather than terminate PFC authority. However, the FAA does not believe the ability to reduce AIP funds alone in place of termination would be adequate. PFC revenue could greatly exceed AIP funds, reducing the

incentive for a public agency to take corrective action. In addition, the Administrator may have to wait for up to a year to reduce any AIP funds if the airport has already received its funds for the year. The statute, and therefore this rule, does not require a public hearing before such AIP offset. However, the public agency is likely to have had a hearing through the termination process.

Subpart F

Subpart F specifies how funds apportioned under the Airport Improvement Program would be reduced to public agencies controlling certain large and medium airports imposing a PFC, and the procedure for implementing such reductions.

Section 158.93 Public Agencies Subject To Reduction

Section 9111 of the statute requires that funds apportioned under Section 507(a)(1) of the Airport and Airway Improvement Act of 1982, be reduced at commercial service airports imposing a PFC and enplaning 0.25 percent or more of total annual enplanements in the United States. There are currently 71 airports in this category. Apportionments for all other commercial service airports would not be reduced.

As proposed, the apportionment would be reduced 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 controlled more than one airport, the reduction in apportionments would be calculated separately for each airport.

Comments: Commenters point out that only passenger entitlement funds, and not cargo or state apportionments, should be reduced in return for authority to impose a PFC.

Final rule: No changes were made in this section because the NPRM was clear in stating that funds apportioned under Section 507(a)(1) of the AAIA would be reduced. That section applies only to apportionments to primary airports based on passenger counts.

Section 158.95 Implementation of Reduction.

The NPRM provided for apportionments to be reduced 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. The amount of the reduction would have equaled 50 percent of the PFC revenue forecast for the fiscal year. However, a public agency would not

lose more than 50 percent of its apportioned funds and the annual calculation of AIP apportioned amounts would have reflected the reductions caused by PFC revenue.

The NPRM proposed 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 the total reduction would not exceed 50 percent of the otherwise apportioned amounts.

Comments: Several commenters suggest apportionment funds not available to the primary airport be granted to airports within the same general area or the same state. Other comments propose a hearing be held before any reductions in apportionments are made. One comment objects to the fact that apportionment would not be reduced in the same year as approval is granted to impose a PFC.

Final rule: The final rule is only slightly changed from the NPRM. The rule does not provide for returning apportioned funds to airports in the same state or area or for a hearing procedure. The Aviation Safety and Capacity Expansion Act, in sections 9111 and 9112, clearly states that apportioned funds will be reduced if a large or medium hub airport imposes a PFC and specifies how these funds will be made available for other airports.

The final rule retains the concept of reducing apportionments in the fiscal year immediately following the year in which the Administrator approves authority to impose a PFC. This eliminates the requirement to adjust apportioned levels throughout the year and to readjust the amount of foregone apportioned funds available to the categories of airports.

Appendix A—Assurances (Proposed; Appendix B Assurances)

The NPRM included a list of 12 numbered assurances to which a public agency would have been required to agree for approval of a PFC application. The assurances addressed a number of issues, ranging from the public agency's authority to impose a PFC to restrictions on airport rates, fees and charges. The FAA intended them to function much like conditions of approval. The use of assurances was proposed because of public agency familiarity with the use of assurances under the AIP. The assurances were intended to ensure that implementation of approved PFC projects would be consistent with the PFC statute and this regulation and that approval of the use of PFC revenue

would not conflict with other FAA responsibilities related to airports.

The proposed assurances generated numerous comments. A few commenters suggest assurances are unnecessary, while several others believe the assurances should only include those directly referenced in the PFC legislation. Other commenters propose deletion or modification of specific assurances. Other comments request additional assurances on a variety of topics ranging from procedures for consultant selection to compliance with sections 9304 and 9307 of the ANCA.

The final rule retains the requirement for signed public agency assurances as part of the application process. This approach has worked well in the AIP context, and is consistent with the statutory authority to impose establish terms and conditions for approval. However, the FAA has modified a number of the individual assurances and deleted some in response to the comments. In addition, one new assurance has been added. The FAA's intent in the final rule has been to limit the assurances to subjects directly related to compliance with the PFC statute and this regulation, or to the safe and efficient use of the national airspace. The FAA agrees with the views expressed in many comments that the PFC regulation or assurances should not be used to address wholly unrelated airport practices.

For ease of understanding, each assurance proposed in the NPRM is discussed separately and identified by the assurance number listed in the NPRM. The final assurance number and reference is also given. Following this discussion, new assurances are addressed.

Assurance No. 1 Responsibility and Authority of Public Agency (Proposed Assurance No. 2)

As proposed, the public agency would certify through this assurance that it has legal authority to impose a PFC and carry out a project, that the governing body has properly authorized the filing of the application, and that the official submitting the application has been authorized to provide such additional information as may be required.

Some commenters believe it unnecessary to assure that future requirements for information will be complied with.

The final rule omits the reference to providing additional information. The regulation allows the Administrator to request this information without a separate assurance.

Assurance No. 2 Compliance With 14 CFR (Proposed Assurance No. 1)

As proposed, the public agency would agree to comply with the PFC regulation through this assurance. The assurance is unchanged in the final rule.

Assurance No. 3 Compliance With Local Law and Regulations

As proposed, this assurance would have required the public agency to certify that it has complied with applicable local laws and regulations. In the final rule, the wording has been modified to allow a public agency to certify prospectively that it will comply. The latter assurance would be made in the case of an application for authority to impose a PFC when project implementation is not imminent.

Proposed Assurance No. 4 Fund Availability (Deleted)

As proposed, this assurance would have required the public agency to certify it had funds to pay for the non-PFC share of project costs and to pay for operations and maintenance of the project. Many commenters say an assurance that funds are currently available for future operation and maintenance of facilities is unrealistic, especially when approval is sought only to impose a PFC. Upon consideration of the comments, this assurance has been deleted from the final rule. The FAA agrees it is not realistic to ask public agencies to certify as to their financial condition many years in the future.

Assurance No. 4 Environmental, Airspace and Airport Layout Plan Requirements (Proposed Assurance No. 5)

As proposed, this assurance would have required the public agency to commit to comply with applicable regulations of the Council on Environmental Quality (CEQ) implementing NEPA. Some comments suggest Assurance 5 be deleted in its entirety as it is not necessary to ensure CEQ requirements are met.

In the final rule, the assurance has been substantially revised. The reference to CEQ regulations is eliminated. However, as revised, this assurance requires public agencies to have approved environmental and airspace studies and an approved ALP before using PFC revenue to implement a project. The assurance is particularly applicable when a public agency has received authority to impose a PFC without concurrent authority to use revenue. It provides additional notice to the public agency on the limits of its authority to use PFC revenue without

obtaining necessary Federal approvals and provides a means for the public agency to expressly acknowledge those limitations.

Proposed Assurance No. 6 Safety and Security Prerequisites (Deleted)

As proposed, this assurance would have required the public agency to commit to provide all safety and security equipment required by regulation at each of the airports under its control before imposing a PFC.

Some commenters suggest the deletion of Assurance 6 or at least rewriting it to require airports to meet current standards, not just minimum regulations.

This assurance has been deleted from the final rule. The FAA encourages public agencies to focus their use of PFC revenue, AIP grants and other funding sources on projects to improve airport safety and security, whether by construction or acquisition of up-to-date facilities and equipment. However, the FAA recognizes PFC revenue is local money and that under the statute PFC revenue may be used to finance projects that accomplish a number of objectives. The assurance has been deleted so as not to interfere with the flexibility provided by statute.

Assurance No. 5 Nonexclusivity of Contractual Agreements (Proposed Assurance No. 7)

As proposed, this assurance required the public agency to commit not to enter into long-term exclusive lease and use agreements for PFC-financed projects. The assurance also would have specified that such leases not preclude the funding, developing or assigning of new PFC-financed capacity. This assurance was intended to carry out the statutory prohibitions on such long-term leases and lease agreements.

As discussed above, some commenters argue for prohibiting all exclusive lease and use agreements. However, the statute itself prohibits exclusive agreements only when they are long-term. Therefore, this assurance is unchanged in the final rule.

Assurance No. 6 Carryover Provision (Proposed Assurance No. 8a)

As proposed, this assurance would have required the public agency to refrain from entering into a lease or use agreement for PFC-financed facilities that would automatically extend the term of the agreement in preference to a potentially competing carrier trying to negotiate for the use of those facilities. It was proposed to ensure lease and use agreements did not operate to limit the procompetitive effects of new facilities.

In particular, it was intended to prevent short-term leases from effectively becoming long-term leases during extended negotiations with carriers over lease renewals. The proposed provision was part of a two-element assurance on competitive access.

The FAA did not receive significant comment on this element of proposed assurance 8. It is retained without change in the final rule, but it has been designated as a separate assurance to facilitate a clearer understanding of the requirement.

Assurance No. 7 Competitive Access (Proposed Assurance 8b)

As proposed, this assurance would have required a public agency to commit that any agreement for the use of a PFC-financed facility would prevent the carrier from using the PFC-financed facility if that carrier's existing exclusive-use facilities were not fully utilized or were not made available to other carriers.

Some commenters ask for a better definition of "fully utilized." Others ask that the assurance be deleted altogether.

Subject to technical, clarifying language changes, the assurance is retained in the final rule. It is intended to prevent tenant airlines from locking up new facilities, as well as those they may already lease under exclusive use provisions, and then leaving the latter facilities idle. It is thus retained to ensure that new PFC-financed facilities are actually available to foster competition.

The term "fully utilized" is retained in the assurances. If a different carrier could be accommodated at a facility without disrupting the incumbent carrier's operation at the facility, then the facility is not fully utilized.

Assurance No. 8 Rates, Fees and Charges (Proposed Assurance No. 9)

As proposed, this assurance requires the public agency to make three commitments with respect to rates and charges. (1) It would not treat PFC revenue as airport revenue when establishing a rate, fee or charge pursuant to contracts with carriers; (2) It would not include in the airport's rate base, for purposes of establishing rates, fees or charges, that portion of the capital costs of projects funded by PFC revenue; (3) It would not charge less for exclusive- or preferential-use terminal facilities, including gates, financed with PFC revenue than it charges for similar facilities financed by other means. This assurance was intended to conform to statutory requirements for public agency policies on rates, fees and charges if a PFC is imposed.

Some commenters ask for clarification of this assurance. They noted a potential conflict between the language of the second and third provision. The language of the third provision has been modified to indicate that it is applicable, notwithstanding the limitation provided in the preceding paragraph.

Assurance No. 9 Standards and Specifications (Proposed Assurance No. 10)

As proposed, this assurance would have required the public agency to commit to follow design, construction and equipment standards and specifications contained in FAA advisory circulars in effect on the application date. It was proposed to help ensure system-wide uniformity in the design and construction of airports.

Comments on this assurance range from proposals for complete deletion to modification of the assurance to permit use of state or local specifications and standards. One commenter requests using standards and specifications exceeding the FAA's.

The assurance is retained in the final rule with some modification. The FAA has concluded that the assurance is appropriate to further the objective of system-wide uniformity. The FAA will interpret the assurance to require that minimum standards be met, but not to preclude airports from exceeding these requirements where local policies call for such.

The advisory circulars covered by the assurance will be only those related to design, construction and equipment standards and specifications and will not include those related to such other areas as planning or consultant selection. Considering that PFC revenue is local money, the FAA has determined not to require compliance with standards that do not directly relate to achieving uniformity in airport design and construction. The FAA will develop and make available a list of the applicable advisory circulars.

The assurance has been changed to indicate that a project is to be carried out in accordance with standards and specifications in effect on the date of project approval rather than on the date of application submission. This change is necessary to accommodate the new provision in the rule that permits a public agency to apply for approval only to impose a PFC. In addition, the title has been changed to more accurately reflect the contents of the assurance.

Assurance No. 10 Recordkeeping and Audit (Proposed Assurance No. 11)

As proposed, this assurance would have required the public agency to commit to maintain an accounting record until 3 years after completion of a project or as long as PFC revenue is collected to finance the project. It was intended to help ensure that adequate financial records would be available to the Administrator throughout the period a PFC is imposed.

Some commenters suggest accounting records under this assurance be kept until the completion of the project, not for the duration of the PFC.

The assurance is modified in the final rule to require retention of records only for 3 years after completion of the project. Once the project is completed and its final costs are known, the public agency's compliance with the periodic reporting and auditing requirements should provide sufficient information to the FAA. A separate accounting record would be unnecessary.

Assurance No. 11 Reports (Proposed Assurance 12)

As proposed, this assurance would have required the public agency to commit to comply with the reporting requirements of subpart D of the rule, including the Administrator's reasonable requests for special reports. It was intended to provide clear notice and evidence of the public agency's acceptance of reporting obligations under the rule.

This assurance did not generate significant specific comment, and it is retained unchanged from the NPRM.

Assurance No. 12 Airport Noise and Capacity Expansion Act of 1990

This new assurance had no counterpart in the NPRM. The FAA has added it following consideration of the comments. Under the assurance, the public agency must acknowledge that it understands that provisions of the Airport Noise and Capacity Act require the Administrator to terminate authority to impose a PFC if the Administrator finds the public agency to be in violation of those provisions.

The assurance is intended to provide additional notice to the public agency of the link between compliance with the noise statute and the continued authority to impose a PFC. It also provides a ready means for the public agency to confirm it understands that linkage.

Miscellaneous Issues**Tax Status of PFC's**

Seven respondents requested clarification of tax status of PFC's. All state that the PFC charges should not be subject to the 10 percent ticket tax, because PFC's are not part of the fare. The FAA agrees with this interpretation; however, the FAA had not been able to obtain a definitive interpretation from the Federal offices responsible for administering the tax.

Application of Department Policy on Price Advertising

To alleviate uncertainty about the application of the Department's price advertising policy to PFC's, the NPRM indicated that the Department tentatively had 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. The FAA received no negative comments on this issue. The Department has advised the FAA that it will make final its tentative decision.

Paperwork Reduction Act

The recordkeeping and reporting requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval. The information collection requirements in this rule will become effective when they are approved by OMB.

Environmental Issues

The FAA tentatively concluded in the NPRM that issuance of this final rule would not be a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA. A final environmental assessment has concluded that issuance of this rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA. A copy of this assessment has been placed in the docket.

Regulatory Evaluation Summary

This summary discusses the anticipated benefits and costs associated with implementing this final rule, which is based on section 9110 of the Aviation Safety and Capacity Expansion Act of 1990 (the Act). The regulatory evaluation contained in the docket provides more detail on the economic consequences of this regulatory action. In addition to a summary of the regulatory evaluation, this summary also contains the 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 several reasons, has determined that this rule is not "major" as defined in the executive order. As a result of this determination, the requirement of the Act is satisfied by a regulatory evaluation, rather than a full regulatory impact analysis.

Benefits and Costs of PFC-Funded Projects

This evaluation examines the impact of a final rule under which the FAA allows public agencies that control airports to impose PFC's. The rule requires 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.

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 would 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.

Under §§ 158.51 and 158.53 of the rule, carriers are to be compensated for handling PFC's through the retention of a fixed fee per PFC plus earnings on the revenue "float" for the PFC's that they collect. The fixed fee is set at \$0.12 per PFC for the first 3 years after the effective date of the rule, in order to provide compensation not only for collecting, handling, and remitting the revenue, but for the cost of establishing the system that carries out these functions. This fixed fee drops to \$0.08 per PFC after 3 years. The amount of interest accrued annually on an account held by a carrier for payment to an airport will equal the applicable annual interest rate multiplied by the average balance held by the carrier. The average balance held by a carrier for payment to public agencies will depend on the total

fee revenue collected by the carrier, the payment schedule, and the applicable fixed fee. For example, with revenue of \$1 billion per year, if the applicable interest rate (or earnings on the balance held) were 10 percent, and the payment schedule were as specified in the rule (in which revenue collected during each month are paid to the airports at the end of the month after the end of each month of collection) annual earnings on the float could be approximately \$12 million.

It is noted that, should \$1 billion per year be collected in \$3 PFC's, 333 million PFC's would be handled. With earnings on the float of approximately \$12 million per year, interest earnings would be on the order of \$0.036 per PFC collected. Under these assumptions, compensation per \$3 PFC collected would be approximately \$0.156 during the initial 3-year period and \$0.116 thereafter.

The FAA has attempted to structure the rule 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 specified in Subpart C that all PFC's be collected and remitted by the issuing carrier, thus eliminating interline settlements.

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 final rule allow the retention of a fixed fee plus 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. Small carriers are provided protection against auditing costs by § 158.69(b) of the rule, which requires at least annual audits only for collecting

carriers that collect more than 50,000 PFC's annually. This level of PFC collection implies compensation for PFC collection on the order of \$5,800 to \$7,800 per year. Further protection against PFC collection burden is given by § 158.11, which provides that "a public agency may request that collection of PFC's by any class of air carriers or foreign air carriers not be required, if the number of passengers enplaned by the carriers in the class constitute no more than 1 percent of the total number of passengers enplaned annually at the airport at which the PFC is imposed." The conclusion is that the imposition of PFC's will not have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities.

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 costs of establishing the charge and managing the revenue that results.

Trade Impact Assessment

The provisions of this 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. 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. In addition, while the rule permits carriers to limit collection to the last airport at which a passenger enplanes before departing from the U.S. when a ticket is issued outside the U.S., this provision applies equally to air carriers and foreign air carriers. Likewise, for tickets issued in the U.S., the rule imposes the same requirements on foreign air carriers.

Federalism Implications

The regulations 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 regulations 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).

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 rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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 final rule is not major under Executive Order 12291. This rule is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of the rule, 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 14 CFR Part 158

Air carriers, Airport, Air transportation, Passenger facility charge.

The Final Rule

Accordingly, the FAA adds a new part 158 of the Federal Aviation Regulations, 14 CFR part 158, 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 Limitations.
- 158.11 Public agency request not to require collection of PFC's by a class of air carriers or foreign air carriers.
- 158.13 Use of PFC revenue.
- 158.15 Project eligibility.

Subpart B—Application and Approval

- 158.21 General.
- 158.23 Consultation with air carriers and foreign air carriers.
- 158.25 Applications.
- 158.27 Review of applications.
- 158.29 The Administrator's decision.
- 158.31 Duration of authority to impose a PFC after project implementation.
- 158.33 Duration of authority to impose a PFC before project implementation.
- 158.35 Extension of time to submit application to use PFC revenue.
- 158.37 Amendment of approved PFC.
- 158.39 Use of Excess PFC Revenue.

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

- 158.41 General.
- 158.43 Public agency notification to collect PFC's.
- 158.45 Collection of PFC's on tickets issued in the U.S.
- 158.47 Collection of PFC's on tickets issued outside the U.S.
- 158.49 Handling of PFC's.
- 158.51 Remittance of PFC's.
- 158.53 Collection compensation.

Subpart D—Reporting, Recordkeeping and Audits

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

Subpart E—Termination

- 158.81 General.
- 158.83 Informal resolution.
- 158.85 Termination of authority to impose PFC's.
- 158.87 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—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) and 9307 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's) 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 that lists airport-related planning, development or noise compatibility projects expected to be accomplished with anticipated available funds.

Airport layout plan (ALP) 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, PFC or other 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, including passenger manifests.

Allowable cost means the reasonable and necessary costs of carrying out an

approved project including costs incurred prior to and subsequent to the approval to impose a PFC, and making payments for debt service on bonds and other indebtedness incurred to carry out such projects. Allowable costs include only those costs incurred on or after November 5, 1990.

Approved project means a project for which use of PFC revenue has been approved under this part. Specific projects contained in a single or multi-phased project or development described in an airport capital plan may also be approved separately.

Bond financing costs means the costs of financing a bond and includes such costs as those associated with issuance, underwriting discount, original issue discount, capitalized interest, debt service reserve funds, initial credit enhancement costs, and initial trustee and paying agent fees.

Charge effective date means the date on which carriers are obliged to collect a PFC.

Charge expiration date means the date on which carriers are to cease to collect a PFC.

Collecting carrier means an issuing carrier or other carrier collecting a PFC, whether or not such carrier issues the air travel ticket.

Collection means the acceptance of payment of a PFC from a passenger.

Commercial service airport means a public airport (as defined by 49 U.S.C. app. 2202(17)) determined by the Secretary to enplane annually 2,500 or more passengers and to receive scheduled passenger service of aircraft.

Debt service means payments for such items as principal and interest, sinking funds, call premiums, periodic credit enhancement fees, trustee and paying agent fees, coverage, and remarketing fees.

Exclusive long-term lease or use agreement means an exclusive lease or use agreement between a public agency and an air carrier or foreign air carrier with a term of 5 years or more.

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

Implementation of an approved project means: (1) With respect to construction, issuance to a contractor of notice to proceed or the start of physical construction; (2) with respect to nonconstruction projects other than property acquisition, commencement of work by a contractor or public agency to carry out the statement of work; or (3) with respect to property acquisition projects, commencement of title search.

surveying, or appraisal for a significant portion of the property to be acquired.

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.

One-way trip means any trip that is not a round trip.

Passenger enplaned means a domestic, territorial or international revenue passenger enplaned in the States in scheduled or nonscheduled service on aircraft in intrastate, interstate, or foreign commerce.

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

Project means airport planning, airport land acquisition or development of a single project, a multi-phased development program, (including but not limited to development described in an airport capital plan) or a new airport for which PFC financing is sought or approved under this part.

Public agency means a State or any agency of one or more States; a municipality or other political subdivision of a State; an authority created by Federal, State or local law; a tax-supported organization; or an Indian tribe or pueblo that controls a commercial service airport.

Round trip means a trip on a complete air travel itinerary which terminates at the origin point.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and Guam.

Unliquidated PFC revenue means revenue received by a public agency from collecting carriers but not yet used on approved projects.

§ 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 an airport. No public agency may 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 may 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 PFC revenue by a public agency in accordance with this part.

(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 or use the PFC revenue in accordance with this part.

§ 158.9 Limitations.

(a) No public agency may impose a PFC on any passenger on any flight to an eligible point on an air carrier that receives essential air service compensation on that route under section 419 of the Federal Aviation Act (49 U.S.C. app. 1389). The Administrator makes available a list of carriers and eligible routes determined by the Department of Transportation for which PFC's may not be imposed under this section.

(b) No public agency may require a foreign airline that does not serve a point or points in the U.S. to collect a PFC from a passenger.

§ 158.11 Public agency request not to require collection of PFC's by a class of air carriers or foreign air carriers.

Subject to the requirements of this part, a public agency may request under § 158.25 or § 158.37 that collection of PFC's by any class of air carriers or foreign air carriers not be required if the number of passengers enplaned by the carriers in the class constitutes no more than one percent of the total number of passengers enplaned annually at the airport at which the PFC is imposed.

§ 158.13 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 approved projects at any airport the public agency controls.

(a) *Total cost.* PFC revenue may be used to pay all or part of the allowable cost of an approved project.

(b) *Bond-associated debt service and financing costs.* (1) PFC revenue may be used to pay debt service and financing costs incurred on that portion of a bond issued to carry out approved projects.

(2) If bond documents require that PFC revenue be commingled in the general revenue stream of the airport controlled by the public agency and pledged generally for the benefit of holders of obligations issued thereunder, PFC revenue is deemed to have been used to pay the costs covered in § 158.13 (b)(1) if—

(i) An amount equal to that portion of the proceeds of the bond issued to carry out approved projects is used to pay allowable costs of such projects; and

(ii) To the extent that the amount of PFC revenue collected in any year exceeds the amount of debt service and financing costs on such bonds during that year, an amount equal to the excess is applied as required by § 158.39.

(c) *Combination of PFC revenue and Federal grant funds.* A public agency may use a combination of PFC revenue and airport grant funds to accomplish an approved 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).

(d) *Non-Federal share.* PFC revenue may be used to meet the non-Federal share of the cost of projects funded under the Federal airport grant program.

(e) *Approval of project following approval to impose a PFC.* The public agency shall not use PFC revenue or interest earned thereon except on an approved project.

§ 158.15 Project eligibility.

(a) To be eligible, a project must—

- (1) Preserve or enhance safety, security, or capacity 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 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 eligible for Federal assistance under 49 U.S.C. App. 2104(c), without regard to whether the measures have been approved pursuant to 14 CFR part 150; or
- (6) Construction of gates and related areas at which passengers are enplaned or deplaned and other areas directly related to the movement of passengers and baggage in air commerce within the boundaries of the airport. These areas do not include restaurants, car rental facilities, automobile parking facilities, or other concessions.

Subpart B—Application and Approval**§ 158.21 General.**

This subpart specifies the consultation and application requirements under which a public agency may obtain approval to impose a PFC and use PFC revenue on a project. This subpart also establishes the procedure for the Administrator's review and approval of applications and amendments and establishes requirements for use of excess PFC revenue.

§ 158.23 Consultation with air carriers and foreign air carriers.

(a) *Notice by public agency.* Prior to submitting an application to the FAA for authority to impose a PFC under § 158.25(b) and for project approval under § 158.25(c), a public agency shall provide written notice to all air carriers and foreign air carriers operating at the airport except those air carriers that the public agency may choose to request not to collect PFC's as provided by § 158.11. The notice shall include—

(1) Descriptions of projects being considered for funding by PFC's;

(2) The PFC level, the proposed charge effective date, the estimated charge expiration date and the estimated total PFC revenue;

(3) For a request by a public agency that any class or classes of carriers not be required to collect the PFC—

(i) The designation of each such class,

(ii) The names of the carriers belonging to each such class, to the extent the names are known,

(iii) The estimated number of passengers enplaned annually by each such class, and

(iv) The public agency's reasons for requesting that carriers in each such class not be required to collect the PFC; and

(4) Except as provided in § 158.25(c)(2), the date and location of a meeting at which the public agency will present such projects to air carriers and foreign air carriers operating at the airport.

(b) *Meeting.* The meeting required by paragraph (a)(4) of this section shall be held no sooner than 30 days nor later than 45 days after issuance of the written notice required by paragraph (a) of this section. At or before the meeting, the public agency shall provide air carriers and foreign air carriers with—

(1) A description of projects;

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

(3) A detailed financial plan for the projects, including—

(i) the estimated allowable project costs allocated to major project elements;

(ii) The anticipated total amount of PFC revenue that will be used to finance the projects; and

(iii) The source and amount of other funds, if any, needed to finance the projects.

(c) *Requirements of air carriers and foreign air carriers.* (1) Within 30 days following issuance of the notice required by paragraph (a) of this section, each carrier must provide the public agency with a written acknowledgement that it received the notice.

(2) Within 30 days following the meeting, each carrier must provide the public agency with a written certification of its agreement or disagreement with the proposed project. A certification of disagreement shall contain the reasons for such disagreement. The absence of such reasons shall void a certification of disagreement.

(3) If a carrier fails to provide the public agency with timely acknowledgement of the notice or timely certification of agreement or disagreement with the proposed project, the carrier is considered to have certified its agreement.

§ 158.25 Applications.

(a) *General.* This section specifies the information to be submitted by a public agency when applying for the authority to impose a PFC and for the authority to use PFC revenue on a project. A public agency may apply for the authority to impose a PFC at any commercial service airport it controls to finance airport-related projects to be carried out at that airport or at any existing or proposed airport which the public agency controls. A public agency may apply for the authority to impose a PFC in advance of or concurrent with an application to use PFC revenue. Applications shall be submitted in a manner and form prescribed by the Administrator and shall include the information required under paragraphs (b) or (c), or both, of this section.

(b) *Application for authority to impose a PFC.* This paragraph sets forth the information to be submitted by all public agencies seeking authority to impose a PFC. A separate application shall be submitted for each airport at which a PFC is to be imposed. The application shall be signed by an authorized official of the public agency, and, unless otherwise authorized by the Administrator, must include the following:

(1) The name and address of the public agency.

(2) The name and telephone number of the official submitting the application on behalf of the public agency.

(3) The official name of the airport at which the PFC is to be imposed.

(4) The official name of the airport at which a project is proposed.

(5) A copy of the airport capital plan or other documentation of planned improvements for each airport at which a PFC financed project is proposed.

(6) A description of each project proposed.

(7) The project justification, including the extent to which the project achieves one or more of the objectives set forth in § 158.15(a). In its justification for any project for terminal development, including gates and related areas, the public agency shall discuss any existing conditions that 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.

(8) The charge to be imposed on each enplaned passenger.

(9) The proposed charge effective date.

(10) The estimated charge expiration date.

(11) A summary of consultation with air carriers and foreign air carriers operating at the airport, including—

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

(ii) A list of carriers that acknowledged receipt of the notice provided § 158.23(a);

(iii) Lists of carriers that certified agreement and that certified disagreement with the project; and

(iv) A summary of substantive comments by carriers contained in any certifications of disagreement with the project, and the public agency's reasons for proceeding.

(12) If the public agency is also filing a request under § 158.11—

(i) The request;

(ii) A copy of the information provided to the carriers under § 158.23(a)(3);

(iii) A copy of the carriers' comments with respect to such information;

(iv) A list of any class or classes of carriers that would not be required to collect a PFC if the request is approved; and

(v) The public agency's reasons for submitting the request in the face of any opposing comments.

(13) A copy of information regarding the financing of the project presented to the carriers and foreign air carriers under § 158.23 of this part and as revised during consultation.

(14) For an application not accompanied by a concurrent

application for authority to use PFC revenue:

(i) A description of any alternative methods being considered by the public agency to accomplish the objectives of the project;

(ii) A description of alternative uses of the PFC revenue to ensure such revenue will be used only on eligible projects in the event the proposed project is not approved;

(iii) A timetable with projected dates for completion of project formulation activities and submission of an application to use PFC revenue; and

(iv) A projected date of project implementation and completion.

(15) A signed statement certifying that the public agency will comply with the assurances set forth in Appendix A to this part.

(16) Such additional information as the Administrator may require.

(c) *Application for authority to use PFC revenue.* A public agency may use PFC revenue only for projects approved under this paragraph. This paragraph sets forth the information that a public agency shall submit, unless otherwise authorized by the Administrator, when applying for the authority to use PFC revenue to finance specific projects.

(1) An application submitted concurrently with an application for the authority to impose a PFC, must include:

(i) The information required under paragraphs (b) (1) through (13) of this section;

(ii) A signed certification that—

(A) For projects required to be shown on an ALP, the ALP depicting the project has been approved by the FAA and the date of such approval;

(B) All environmental reviews required by the National Environmental Policy Act (NEPA) of 1969 have been completed and a copy of the final FAA environmental determination with respect to the project has been approved, and the date of such approval, if such determination is required; and

(C) The final FAA airspace determination with respect to the project has been completed, and the date of such determination, if an airspace study is required.

(iii) The estimated project implementation date, schedule and completion date; and

(iv) The information required by § 158.25(b)(25) and (16).

(2) An application where the authority to impose a PFC has previously been approved—

(i) Shall be preceded by further consultation with air carriers and foreign air carriers as set forth under § 158.23 of this part, except that the

meeting required under § 158.23(a)(4) is optional; and

(ii) Shall include, in addition to a summary of further consultation conducted under paragraph (c)(2)(i) of this section, the following, updated and revised where appropriate—

(A) The information required by paragraphs (b) (1), (2), (4), (5), (6), (7), (10) and (13) of this section;

(B) The information required by paragraph (c)(1)(ii) of this section; and

(C) The information required by paragraphs (b) (15) and (16) of this section.

§ 158.27 Review of applications.

(a) *General.* This section describes the process for review of all applications filed under § 158.25 of this part.

(b) *Determination of completeness.* Within 30 days after receipt of an application by the FAA Airports office, the Administrator determines whether the application substantially complies with the requirements of § 158.25.

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

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

(2) The Administrator publishes 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 (e) of this section. A copy of the notice is also 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 (g) of this section, the Administrator issues a final decision approving or disapproving the application, in whole or in part, no later than 120 days after the application was received by the FAA Airports office.

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

(1) The Administrator notifies the public agency in writing that its application is not substantially complete. The notification will list the

information required to complete the application.

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

(3) If the public agency declines to supplement the application, the Administrator follows the procedures for review of an application set forth in paragraph (c) of this section and issues a final decision approving or disapproving the application, in whole or in part, no later than 120 days after the application was received by the FAA Airports office.

(4) If the public agency supplements its application, the original application is deemed to be withdrawn for purposes of applying the statutory deadline for the Administrator's decision. Upon receipt of the supplement, the Administrator issues a final decision approving or disapproving the supplemented application, in whole or in part, no later than 120 days after the supplement was received by the FAA Airports office.

(e) *The Federal Register notice.* The Federal Register notice includes 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 determination on whether the application is substantially complete and any information required to complete the application; and

(5) The due dates for any public comments.

(f) *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 § 158.23.

§ 158.29 The Administrator's decision.

(a) *Authority to impose a PFC.* (1) An application to impose a PFC will be approved in whole or in part only after a determination that—

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

(ii) The project will achieve the objectives set forth in § 158.15(a);

(iii) The project meets the criteria set forth in § 158.15(b);

(iv) The collection process, including any request by the public agency not to require a class of carriers to collect PFC's, is reasonable, not arbitrary, nondiscriminatory, and otherwise in compliance with the law;

(v) The public agency has not been found to be in violation of section 9304(e) or section 9307 of the Airport Noise and Capacity Act of 1990; and

(vi) If the public agency has not applied for authority to use PFC revenue, a finding that there are alternative uses of the PFC revenue to ensure that such revenue will be used on approved projects.

(2) The Administrator notifies the public agency in writing of the decision on the application. The notification will list the projects and alternative uses that may qualify for PFC financing under § 158.15, PFC level, total approved PFC revenue, duration of authority to impose and earliest permissible charge effective date.

(b) *Authority to use PFC revenue on an approved project.* (1) An application for authority to use PFC revenue will be approved in whole or in part only after a determination that—

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

(ii) The project will achieve the objectives set forth in § 158.15(a);

(iii) The project meets the criteria set forth in § 158.15(b); and

(iv) All applicable requirements pertaining to the ALP for the airport, airspace studies for the project, and the National Environmental Policy Act of 1969 (NEPA), 40 U.S.C. have been satisfied.

(2) The Administrator notifies the public agency in writing of the decision on the application. The notification will list the approved projects, PFC level, total approved PFC revenue, and any limit on the duration of authority to impose a PFC as prescribed under § 158.33.

(3) Approval to use PFC revenue to finance a project shall be construed as approval of that project.

(c) *Disapproval of application.* (1) If an application is disapproved, the Administrator notifies the public agency in writing of the decision and the reasons for the disapproval.

(2) A public agency reapplying for approval to impose or use a PFC shall comply with §§ 158.23 and 158.25 of this part.

(d) The Administrator publishes a monthly notice of PFC approvals and disapprovals in the *Federal Register*.

§ 158.31 Duration of authority to impose a PFC after project implementation.

A public agency that has begun implementation of a project approved under § 158.29 is authorized to impose a PFC until—

(a) The charge expiration date is reached;

(b) The total PFC revenue collected plus interest thereon will equal the allowable cost of the approved project;

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

(d) The public agency is determined by the Administrator to be in violation of section 9304(e) or 9307 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 that statute's implementing regulations under this title.

§ 158.33 Duration of authority to impose a PFC before project implementation.

(a) A public agency shall not impose a PFC beyond the lesser of the following—

(1) 2 years after approval to use PFC revenue on an approved project if the project has not been implemented; or

(2) 5 years after the charge effective date if an approved project is not implemented.

(b) If, in the Administrator's judgment, the public agency has not made sufficient progress toward

implementation of an approved project within the times specified in paragraph (a) of this section, the Administrator begins termination proceedings under subpart E of this part.

(c) The authority to impose a PFC following approval shall automatically expire without further action by the Administrator on the following dates:

(1) 3 years after the charge effective date unless—

(i) The public agency has filed an application for approval to use PFC revenue for an eligible project that is pending before the FAA;

(ii) An application to use PFC revenue has been approved; or

(iii) A request for extension (not to exceed 2 years) to submit an application

for project approval, under § 158.35, has been granted; or

(2) 5 years after the charge effective date unless the public agency has obtained project approval.

(d) If the authority to impose a PFC expires under paragraph (c) of this section, the public agency must provide the FAA with a list of the air carriers and foreign air carriers operating at the airport and all other collecting carriers that have remitted PFC revenue to the public agency in the preceding 12 months. The FAA notifies each of the listed carriers to terminate PFC collection no later than 30 days after the date of notification by the FAA.

(e) Restriction on reauthorization to impose a PFC. Whenever the authority to impose a PFC has expired or been terminated under this section, the Administrator will not grant new approval to impose a PFC in advance of implementation of an approved project.

§ 158.35 Extension of time to submit application to use PFC revenue.

(a) A public agency may request an extension of time to submit an application to use PFC revenue after approval of an application to impose PFC's. At least 30 days prior to submitting such request, the public agency shall publish notice of its intention to request an extension in a local newspaper of general circulation and shall request comments. The notice shall include progress on the project, a revised schedule for obtaining project approval and reasons for the delay in submitting the application.

(b) The request shall be submitted at least 120 days prior to the charge expiration date and, unless otherwise authorized by the Administrator, shall be accompanied by the following:

(1) A description of progress on the project application to date.

(2) A revised schedule for submitting the application.

(3) An explanation of the reasons for delay in submitting the application.

(4) A summary financial report depicting the total amount of PFC revenue collected plus interest, the projected amount to be collected during the period of the requested extension, and any public agency funds used on the project for which reimbursement may be sought.

(5) A summary of any further consultation with air carriers and foreign air carriers operating at the airport.

(6) A summary of comments received in response to the local notice.

(c) The Administrator reviews the request for extension and accompanying information, to determine whether—

(1) The public agency has shown good cause for the delay in applying for project approval;

(2) The revised schedule is satisfactory; and

(3) Further collection will not result in excessive accumulation of PFC revenue.

(d) The Administrator, upon determining that the agency has shown good cause for the delay and that other elements of the request are satisfactory, grants the request for extension to the public agency. The Administrator advises the public agency in writing not more than 90 days after receipt of the request. The duration of the extension shall be as specified in § 158.33 of this part.

§ 158.37 Amendment of approved PFC.

(a) A public agency may, without consultation or approval by the Administrator, institute a decrease in the level of PFC to be collected from each passenger, institute a decrease in the total PFC revenue, or an increase in the total approved PFC revenue of 15 percent or less. The public agency shall notify the collecting carriers and the FAA in writing of these changes. Any new charge will be effective on the first day of a month which is at least 60 days from the time the public agency notifies the carriers.

(b) Subject to paragraph (b)(1) or (b)(2) of this section, an approved PFC may be amended to increase the level of PFC to be collected from each passenger, increase the total approved PFC revenue by more than 15 percent, materially alter the scope of an approved project, establish a new class of carriers under § 158.11 or amend any such class previously approved. The public agency must submit to the Administrator a notification of any proposal to institute such an amendment. Such notification shall include written evidence of further consultation with and agreement or disagreement by the air carriers and foreign air carriers operating at the airport, justification for the amendment, and such other information as may be requested by the Administrator.

(1) In the event of no carrier disagreement with a change proposed under paragraph (b) of this section, the public agency may institute the proposed amendment unless, within 30 days after providing the notification required under that paragraph, it is notified otherwise by the Administrator. The public agency shall notify the carriers of the effective date of any change to the approved PFC resulting

from the amendment, subject to the limitation that the effective date of any new charge shall be no earlier than the first day of a month which is at least 60 days from the time the public agency notifies the carriers.

(2) In the event of any carrier disagreement with a change proposed under paragraph (b) of this section, the public agency shall submit a request to the Administrator that the proposed amendment be approved. In addition to the notification and written evidence required under that paragraph, the public agency shall submit the reasons presented by the carriers for disagreeing with the proposed amendment, its reasons for requesting the amendment in the face of such disagreement, and such other information as may be requested by the Administrator. The Administrator reviews and approves or disapproves the amendment within 120 days of receipt of the request following such consultation, public notice and opportunity for comment as the Administrator may deem appropriate. If the amendment is approved, the Administrator advises the public agency and notification to the carriers will be as provided under paragraph (b)(1) of this section.

§ 158.39 Use of excess PFC revenue.

(a) If the amount of PFC revenue remitted to the public agency, plus interest, exceeds allowable costs of the project, excess funds shall be used for approved projects or retirement of outstanding PFC-financed bonds.

(b) For bond-financed projects, any excess PFC revenue collected under debt servicing requirements shall be retained by the public agency and used for approved projects or retirement of outstanding PFC-financed bonds.

(c) When the authority to impose a PFC has expired or has been terminated, accumulated PFC revenue shall be used for approved projects or retirement of outstanding PFC-financed bonds.

(d) Within 30 days after the authority to impose a PFC has expired or has been terminated, the public agency shall present a plan to the appropriate FAA Airports office to begin using accumulated PFC revenue. The plan shall include a timetable for the submission of any necessary application under § 158.25(c) of this part. If the public agency fails to submit such a plan or if the plan is not acceptable to the Administrator, the Administrator offsets Federal airport grant program apportioned funds.

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 collect PFC's.

(a) Following approval of an application to impose a PFC under subpart B of this part, the public agency shall notify the air carriers and foreign air carriers required to collect PFC's at its airport of the Administrator's approval. Each notified carrier shall notify its agents, including other issuing carriers, of the collection requirement.

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

(1) The level of PFC to be imposed.

(2) The total revenue to be collected.

(3) The charge effective date which will be the first day of a month which is at least 60 days from the date the public agency notifies the carriers of approval to impose the PFC.

(4) The proposed charge expiration date.

(5) A copy of the Administrator's notice of approval.

(6) The address where remittances and reports are to be filed by carriers.

(c) The public agency shall notify carriers required to collect PFC's at its airport of changes in the charge expiration date. Each notified carrier shall notify its agents, including other issuing carriers, of such changes.

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

§ 158.45 Collection of PFC's on tickets issued in the U.S.

(a) On and after the charge effective date, tickets issued in the U.S. shall include the required PFC except as provided in paragraphs (c) and (d) of this section.

(1) Issuing carriers shall be responsible for all funds from time of collection to remittance.

(2) The appropriate charge is the PFC in effect at the time the ticket is issued.

(3) Issuing carriers and their agents shall collect the PFC's based upon the itinerary at the time of issuance. Any changes in itinerary that are initiated by a passenger that require an adjustment to the amount paid by the passenger 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 the airports for which the PFC's are collected.

(c) For each one-way trip shown on the complete itinerary of an 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. For each round trip, a PFC shall be collected only for enplanements at the first two enplaning airports and the last two enplaning airports where PFC's are imposed.

(d) Issuing carriers and their agents shall not collect PFC's from a passenger on any flight to an eligible point on an air carrier that receives essential air service compensation on that route under section 419 of the Federal Aviation Act (49 U.S.C. App. 1389).

(e) Collected PFC's shall be distributed as noted on the air travel ticket.

(f) Issuing carriers and their agents shall stop collecting the PFC's on the charge expiration date stated in a notice from the public agency, or as required by the Administrator.

§ 158.47 Collection of PFC's on tickets issued outside the U.S.

(a) With respect to tickets issued outside the U.S., an air carrier or foreign air carrier may follow the requirements of either § 158.45 of this part or this section.

(b) Notwithstanding any other provisions of this part, no foreign airline is required to collect a PFC on air travel tickets issued on its own ticket stock unless it serves a point or points in the U.S.

(c) If an air carrier or foreign air carrier elects not to comply with § 158.45 for tickets issued outside the U.S.—

(1) The carrier is required to collect PFC's on such tickets only for the public agency controlling the last airport at which the passenger is enplaned prior to departure from the U.S.

(2) The carrier may collect the PFC either at the time the ticket is issued or at the time the passenger is last enplaned prior to departure from the U.S. The carrier may vary the method of collection among its flights.

(3) The carrier shall provide a written record to the passenger that a PFC has been collected. Such a record shall appear on or with the air travel ticket and shall include the same information as required by § 158.45(b), but need not be preprinted on the ticket stock.

(4) The carrier shall collect the PFC based upon the itinerary at the time of issuance. Any changes in itinerary that are initiated by a passenger and that

require an adjustment of the amount paid by the passenger are subject to collection or refund of the PFC as appropriate.

(d) With respect to a flight on which the air carrier or foreign air carrier chooses to collect the PFC at the time the air travel ticket is issued—

(1) The carrier and its agents shall collect the required PFC on tickets issued on or after the charge effective date.

(2) The carrier is not required to collect PFC's at the time of enplanement for tickets sold by other air carriers or foreign air carriers or their agents.

(e) With respect to a flight on which the air carrier or foreign air carrier chooses to collect the PFC at the time of enplanement, the carrier shall examine the air travel ticket of each passenger enplaning at the airport on and after the charge effective date and shall collect the PFC from any passenger whose air travel ticket does not include a written record indicating that the PFC was collected at the time of issuance.

(f) Collected PFC's shall be distributed as noted on the written record provided to the passenger.

(g) Collecting carriers shall be responsible for all funds from time of collection to remittance.

(h) Collecting carriers and their agents shall stop collecting the PFC on the charge expiration date stated in a notice from the public agency, or as required by the Administrator.

§ 158.49 Handling of PFC's.

(a) Collecting carriers shall establish and maintain a financial management system to account for PFC's in accordance with the Department of Transportation's Uniform System of Accounts and Reports (14 CFR part 241). For carriers not subject to 14 CFR part 241, such carriers shall establish and maintain an accounts payable system to handle PFC revenue with subaccounts for each public agency to which such carrier remits PFC revenue.

(b) PFC revenue must be accounted for separately by collecting carriers, but the revenue may be commingled with the carrier's other sources of revenue. The PFC revenue is to be regarded as trust funds held by collecting carriers as agents, for the beneficial interest of the public agencies imposing PFC's. All PFC revenue collected and held by the carriers are property in which the carriers hold only a possessory interest and not an equitable interest.

(c) Each collecting carrier shall be required to disclose the existence and amount of funds regarded as trust funds in financial statements.

§ 158.51 Remittance of PFC's.

Passenger facility charges collected by carriers shall be remitted to the public agency on a monthly basis. PFC revenue recorded in the accounting system of the carrier, as set forth in § 158.49 of this part, shall be remitted to the public agency no later than the last day of the following calendar month (or if that date falls on a weekend or holiday, the first business day thereafter).

§ 158.53 Collection Compensation.

As compensation for collecting, handling and remitting the PFC revenue, the collecting air carrier shall be entitled to:

(a) Retain \$0.12 of each PFC remitted on or before [insert date 3 years after the effective date of this rule]. Thereafter, air carriers shall be entitled to \$0.08 of each PFC remitted; and

(b) Any interest or other investment return earned on PFC revenue between the time of collection and remittance to the public agency.

Subpart D—Reporting, Recordkeeping and Audits

§ 158.61 General.

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

§ 158.63 Reporting requirements: public agency.

(a) The public agency shall provide quarterly reports to carriers collecting PFC's for the public agency with a copy to the appropriate FAA Airports office. The quarterly report shall include PFC revenue received from collecting carriers, interest earned, and expenditures for the quarter; cumulative PFC revenue received, interest earned, expenditures, and the amount committed for use on currently approved projects, including the quarter; and the current project schedule.

(b) The report shall be provided on or before the last day of the calendar month following the calendar quarter or other period agreed by the public agency and collecting carrier.

(c) For airports enplaning 0.25 percent or more of the total annual enplanements in the U.S. for the prior calendar year as determined by the Administrator, the public agency must provide the FAA, by August 1 of each year, an estimate of PFC revenue to be collected for each such airport in the ensuing fiscal year.

§ 158.65 Reporting requirement: Collecting carrier.

Each carrier collecting PFC's for a public agency shall file quarterly reports to the public agency unless otherwise agreed by the collecting carrier and public agency, providing an accounting of funds collected and funds remitted.

(a) Unless otherwise agreed by the collecting carrier and public agency, reports shall state the collecting carrier and airport involved, the total PFC revenue collected, the total amount of PFC revenue refunded to passengers, and the amount of collected revenue withheld by the collecting carrier for reimbursement of expenses in accordance with § 158.53 of this part. The report shall include the dates and amounts of each remittance for the quarter.

(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 collecting carrier and public agency for which funds were collected.

§ 158.67 Recordkeeping and auditing: Public agency.

(a) Each public agency shall keep any unliquidated PFC revenue remitted to it by collecting carriers on deposit in an interest bearing account or in other interest bearing instruments used by the public agency's airport capital fund. Interest earned on such PFC revenue shall be used, in addition to the principal, to pay the allowable costs of PFC-funded projects. PFC revenue may only be commingled with other public agency airport capital funds in deposits or interest bearing instruments.

(b) Each public agency shall establish and maintain for each approved application a separate accounting record. The accounting record shall identify the PFC revenue received from the collecting carriers, interest earned on such revenue, the amounts used on each project, and the amount reserved for currently approved projects.

(c) At least annually during the period the PFC is collected, held or used, each public agency shall provide for an audit of its PFC account. The audit shall be performed by an accredited independent public accountant and may be of limited scope. The accountant shall express an opinion of the fairness and reasonableness of the public agency's procedures for receiving, holding, and using PFC revenue. The accountant shall also express an opinion on whether the quarterly report required under § 158.63 fairly represents the net transactions within the PFC account. The audit may be—

(1) Performed specifically for the PFC account; or

(2) Conducted as part of an audit under the Single Agency Audit Act of 1963 (31 U.S.C. 7501-7) provided that the PFC is specifically addressed by the auditor.

(3) Upon request, a copy of the audit shall be provided to each collecting carrier that remitted PFC revenue to the public agency in the period covered by the audit and to the Administrator.

§ 158.69 Recordkeeping and auditing: Collecting carriers.

(a) Collecting carriers shall establish and maintain for each public agency for which they collect a PFC an accounting record of PFC revenue collected, remitted, refunded and compensation retained under § 158.53(a) of this part. The accounting record shall identify the airport at which the passengers were enplaned.

(b) Each collecting carrier that collects more than 50,000 PFC's annually shall provide for an audit at least annually of its PFC account.

(1) The audit shall be performed by an accredited independent public accountant and may be of limited scope. The accountant shall express an opinion on the fairness and reasonableness of the carrier's procedures for collecting, holding, and dispersing PFC revenue. The opinion shall also address whether the quarterly reports required under § 158.65 fairly represent the net transactions in the PFC account.

(2) For the purposes of an audit under this section, collection is defined as the point when agents or other intermediaries remit PFC revenue to the carrier.

(3) Upon request, a copy of the audit shall be provided to each public agency for which a PFC is collected.

§ 158.71 Federal 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 that the public agency is in compliance with the requirements of this part and section 1113(e) of the Federal Aviation Act.

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

(c) Public agencies and carriers shall allow any authorized representative of the Administrator, the Secretary of

Transportation, or the Comptroller General of the U.S., access to any of its books, documents, papers, and records pertinent to PFC's

Subpart E—Termination**§ 158.81 General.**

This subpart contains the procedures for termination of PFC's or loss of Federal airport grant funds for violations of this part or section 1113(e) of the Federal Aviation Act. This subpart does not address the circumstances under which authority to collect PFC's may be terminated for violations of the Airport Noise and Capacity Act of 1990.

§ 158.83 Informal resolution.

The Administrator shall undertake informal resolution with the public agency or any other affected party if, after review under § 158.71, the Administrator cannot determine that PFC revenue is being used for the approved projects in accordance with the terms of the Administrator's approval to impose a PFC for those projects or with section 1113(e) of the Federal Aviation Act.

§ 158.85 Termination of authority to impose PFC's.

(a) The FAA begins proceedings to terminate the public agency's authority to impose a PFC only if the Administrator determines that informal resolution is not successful.

(b) The Administrator publishes a notice of proposed termination in the Federal Register and supplies a copy to the public agency. This notice will state the scope of the proposed termination, the basis for the proposed action and the date for filing written comments or objections by all interested parties. This notice will also identify any corrective actions the public agency can take to avoid further proceedings. The due date for comments and corrective action shall be no less than 60 days after publication of the notice.

(c) If corrective action has not been taken as prescribed by the Administrator, the FAA holds a public hearing, and notice is given to the public agency and published in the Federal Register at least 30 days prior to the hearing. The hearing will be in a form determined by the Administrator to be appropriate to the circumstances and to the matters in dispute.

(d) The Administrator publishes the final decision in the Federal Register. Where appropriate, the Administrator may prescribe corrective action, including any corrective action the public agency may yet take. A copy of

the notice is also provided to the public agency.

(e) Within 10 days of the date of publication of the notice of the Administrator's decision, the public agency shall—

(1) Advise the FAA in writing that it will complete any corrective action prescribed in the decision within 30 days; or

(2) Provide the FAA 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.

(f) When the Administrator's decision does not provide for corrective action or the public agency fails to complete such action, the FAA provides a copy of the Federal Register notice to each air carrier and foreign air carrier identified in paragraph (e) of this section. Such carriers are responsible for terminating or modifying PFC collection no later than 30 days after the date of notification by the FAA.

§ 158.87 Loss of federal airport grant funds.

(a) If the Administrator determines 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, 49 U.S.C. App. 2206. Such a reduction may be made as a corrective action under § 158.83 or § 158.85 of this part.

(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 part.

(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 Apportionment

§ 158.91 General.

This subpart describes the required 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 are reduced if—

(a) Such airport enplanes 0.25 percent or more of the total annual enplanements in the U.S., and

(b) The public agency imposes a PFC at such airport.

§ 158.95 Implementation of reduction.

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

(b) The reduction in apportioned funds is calculated at the beginning of each fiscal year and 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) 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—Assurances

A. General.

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

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 project that:

1. 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.

2. Compliance with regulation. It will comply with all provisions of 14 CFR part 158.

3. Compliance with state and local laws and regulations. It has complied, or will comply, with all applicable State and local laws and regulations.

4. Environmental, airspace and airport layout plan requirements. It will not use PFC revenue on a project until the FAA has notified the public agency that—

(a) Any actions required under the National Environmental Policy Act of 1969 have been completed;

(b) The appropriate airspace finding has been made; and

(c) The FAA Airport Layout Plan with respect to the project has been approved.

5. 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.

6. Carryover provisions. 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 if such agreement for such facility contains a 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.

7. Competitive access. It agrees that any lease or use agreements between the public agency and any air carrier or foreign air carrier for any facility financed in whole or in part with revenue derived from a passenger facility charge will contain a provision that permits the public agency to terminate the lease or use agreement if—

(a) The air carrier or foreign air carrier has an exclusive lease or use agreement for existing facilities at such airport; and

(b) Any portion of its existing exclusive use facilities is not fully utilized and is not made available for use by potentially competing air carriers or foreign air carriers.

8. 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 or 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) Notwithstanding the limitation provided in subparagraph (b), with respect to a project for terminal development, gates and related areas, or a facility occupied or used by one or more air carriers or 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 by such carriers using similar facilities at the airport that were not financed by PFC revenue.

9. 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 project approval.

10. Recordkeeping and Audit. It will maintain an accounting record for audit purposes for a period of 3 years after completion of the project. All records will satisfy the requirements of 14 CFR part 158 and will contain documentary evidence for all items of project costs.

11. Reports. It will submit reports in accordance with the requirements of 14 CFR

part 158, subpart D, and as the Administrator may reasonably request.

12. Airport Noise and Capacity Act of 1990. It understands sections 9304 and 9307 of the Airport Noise and Capacity Act of 1990 require the authority to impose a PFC be terminated if the Administrator determines the public agency has failed to comply with

that act or with the implementing regulations promulgated thereunder.

Issued in Washington, DC, on May 22, 1991.

James B. Busey,
Administrator.

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