[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 158

[Docket No. FAA-2004-17999; Notice No. 04-09]

RIN 2120-AI15

Passenger Facility Charge Program, Non-Hub Pilot Program and Related Changes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing a pilot program to test new application and application approval procedures for the passenger facility charge (PFC) program. This pilot program will run for 3 years and is available to non-hub airports. Besides the pilot program, this proposed rule also contains several changes designed to streamline the PFC application procedures for all PFC applications and improve the existing PFC program. The FAA is proposing these changes in response to Congressional direction found in the Vision 100—Century of Aviation Reauthorization Act.

DATES: Send your comments on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may send comments [identified by Docket Number FAA-2004-17999] using any of the following methods:

- DOT Docket web site: Go to http://dms.dot.gov and follow the instructions for sending your comments electronically.

- Government-wide rulemaking web site: Go to http://www.regulations.gov and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; US Department of Transportation, 400 Seventh Street, S.W., Nassif Building, Room PL-401, Washington, DC 20590-001.
- Fax: 1-202-493-2251.
- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

Privacy: We will post all comments we receive, without change, to http://dms.dot.gov, including any personal information you provide. For more information, see the Privacy Act discussion in the SUPPLEMENTARY INFORMATION section of this document.

Docket: To read background documents or comments received, go to http://dms.dot.gov at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sheryl Scarborough, Airports Financial Analysis & Passenger Facility Charge Branch, APP–510, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8825; facsimile: (202) 267-5302; e-mail: sheryl.scarborough@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to join in this rulemaking by filing written comments, data, or views. We also invite comments about the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the ADDRESSES section of this preamble between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the ADDRESSES section.

Privacy Act: Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets. This includes the name of the individual sending the comment (or signing the comment for an association, business, labor union). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477-78) or you may visit http://dms.dot.gov.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is

possible to do so without incurring expense or delay. We may change this proposal because of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a preaddressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search);

(2) Visiting the Office of Rulemaking's web page at http://www.faa.gov/avr/arm/index.cfm; or

(3) Accessing the Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue S.W, Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Background

History

The Aviation Safety and Capacity Expansion Act of 1990, codified under 49 U.S.C. § 40117, created the passenger facility charge (PFC) program on November 5, 1990. The Aviation Safety and Capacity Expansion Act of 1990 allowed a public agency to impose a PFC of $1, $2, or $3 for each enplaned passenger at

commercial service airports that the public agency controls. The public agency can then use this PFC revenue to finance FAA-approved, eligible airport-related projects. The FAA's regulations that govern the PFC program are at 14 CFR Part 158 and became effective on June 28, 1991.

The first major revisions to the PFC Program occurred on May 30, 2000. At that time, a final rule was issued that incorporated changes mandated by the Federal Aviation Administration Authorization Act of 1994, the Federal Aviation Reauthorization Act of 1996, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), and the recodification of the Federal Aviation Act of 1958. While this final rule made many changes to the PFC program, the most significant change increased the permitted PFC level by allowing public agencies to impose a $4 or $4.50 PFC as authorized in AIR-21.

On December 12, 2003, President Bush signed the Vision 100-Century of Aviation Reauthorization Act (Vision 100) into law. Vision 100 mandates many changes to the PFC program and this proposed rule addresses several of these changes. This notice proposes revisions to Part 158 to implement a 3-year non-hub pilot program and related streamlining provisions. Vision 100 requires the FAA to propose regulations implementing the pilot program within 180 days of enactment of the Vision 100 pilot program section. A separate rulemaking in the future will address the other statutory and non-statutory changes to the PFC program that are not subject to the statutory deadline.

Statement of the Issue

To impose a PFC, use PFC revenue, or amend an approved PFC, all public agencies must apply for FAA approval through the same process by following the

application rules set forth in Part 158. The application and approval process is the same for airports of all sizes, every project type, and projects previously reviewed by the FAA in other contexts. Vision 100 requires streamlining the general PFC process and creating a pilot program for non-hub airports to test certain streamlining procedures and to reduce the burdens on public agencies and the FAA under the existing procedures. One such burden involves re-creating paperwork that has already been filed with, and, in some cases, reviewed by the FAA. For example, non-hub airports often apply to use PFC revenue either as their matching share for an Airport Improvement Program (AIP) grant or as a supplement to AIP funding. In these cases, the FAA has already reviewed the project under the AIP grant procedures. This duplication of efforts creates inefficiencies for both non-hub airports and the FAA.

In 2002, the FAA examined the PFC program to identify ways to preserve the public interest goals and the existing checks and balances while removing unnecessary, duplicative, and time-consuming steps. The FAA undertook a study of applications and projects approved over the previous five years. This study examined the distribution of PFC funding among projects and airport types. The FAA also studied the extent to which AIP grants partially funded PFC projects. Finally, the FAA examined the characteristics of projects generating air carrier objections during the consultation process and the FAA's public notice and comment process. As a result of this study, the FAA recommended enactment of the non-hub pilot program and other PFC streamlining initiatives included in Vision 100 and this rulemaking. The results of this study are discussed more fully in the section-by-section analysis below.

General Discussion of the Proposals

The FAA is required by statute and regulation to issue the final agency decision on each PFC application within 120 days of the receipt of the application. The current PFC application and review process is the same for all airports regardless of the size of the airport, the PFC collection amount, or the nature of the projects. This process has grown in complexity as the program has matured, leading to calls from airports and air carriers to speed up the process.

Vision 100 mandates creating a pilot program for non-hub airports to test new PFC application and application approval procedures. This NPRM proposes regulations to create the Non-Hub Airport Pilot Program (pilot program). The entire text of the pilot program subsection in Vision 100 reads:

"(l) PILOT PROGRAM FOR PASSENGER FACILITY FEE AUTHORIZATIONS AT NONHUB AIRPORTS.—

"(1) IN GENERAL.—The Secretary shall establish a pilot program to test alternative procedures for authorizing eligible agencies for nonhub airports to impose passenger facility fees. An eligible agency may impose in accordance with the provisions of this subsection a passenger facility fee under this section. For purposes of the pilot program, the procedures in this subsection shall apply instead of the procedures otherwise provided in this section.

"(2) NOTICE AND OPPORTUNITY FOR CONSULTATION.—The eligible agency must provide reasonable notice and an opportunity for consultation to air carriers and foreign air carriers in accordance with subsection (c)(2) and must provide reasonable notice and opportunity for public comment in accordance with subsection (c)(3).

"(3) NOTICE OF INTENTION.—The eligible agency must submit to the Secretary a notice of intention to impose a passenger facility fee under this subsection. This notice shall include—

"(A) information that the Secretary may require by regulation on each project for which authority to impose a passenger facility fee is sought;

"(B) the amount of revenue from passenger facility fees that is proposed to be collected for each project; and

"(C) the level of the passenger facility fee that is proposed.

"(4) ACKNOWLEDGEMENT OF RECEIPT AND INDICATION OF OBJECTION.—The Secretary shall acknowledge receipt of the notice and indicate any objection to the imposition of a passenger facility fee under this subsection for any project identified in the notice within 30 days after receipt of the eligible agency's notice.

"(5) AUTHORITY TO IMPOSE FEE.—Unless the Secretary objects within 30 days after receipt of the eligible agency's notice, the eligible agency is authorized to impose a passenger facility fee in accordance with the terms of its notice under this subsection.

"(6) REGULATIONS.—Not later than 180 days after the date of enactment of this subsection, the Secretary shall propose such regulations as may be necessary to carry out this subsection.

"(7) SUNSET.—This subsection shall cease to be effective beginning on the date that is 3 years after the date of issuance of regulations to carry out this subsection.

"(8) ACKNOWLEDGEMENT NOT AN ORDER.—An acknowledgement issued under paragraph (4) shall not be considered an order issued by the Secretary for purposes of section 46110.".

Vision 100 states the pilot program will only apply to non-hub airports and will end three years after the date of issuance of regulations to carry out the pilot program subsection. Vision 100 defines a non-hub airport as a commercial service airport that has less than 0.05 percent of the passenger boardings in the U.S. in the prior calendar year on an aircraft in service in air commerce. The FAA estimates that non-hub airports account for over 70 percent of all commercial service airports and approximately 15 percent of aircraft operations nationwide. The FAA also estimates that non-hub airports account for about 60 percent of the PFC applications processed over the last 5 years. Non-hub airports produce roughly 2 percent of total annual PFC revenue.

The pilot program will:

(1) Require a public agency to consult with air carriers before filing an application to the FAA to collect or use a PFC. Vision 100 limits the consultation process to only those air carriers with a significant business interest at the airport (the significant business interest standard is also found in statutory changes to the general PFC program);

(2) Require a public agency to provide reasonable notice to and opportunity for comment by the public before filing an application to the FAA to collect or use a PFC (this notice and comment requirement is also included in statutory changes to the general PFC provisions);

(3) Reduce the information a public agency files with the FAA. Instead of filing the information required by 14 CFR §158.25, a public agency will file a notice including information such as:

(a) The proposed PFC level and amount to be collected,

(b) The proposed duration of the collection,

(c) A list of projects to be financed with PFC revenue along with the amount of PFC revenue to be used on each project, and

(d) Information about consultation with the air carriers and the public comment process.;

(4) Require the FAA to acknowledge receipt of notice of intent filed by the public agency and state any objections to the notice within 30 days after receipt of the notice; and

(5) Authorize a public agency to impose a PFC unless the FAA states an objection to imposition within the 30-day time period.

The pilot program differs from current practice in at least three ways:

(1) The pilot program reduces the information a public agency must file with the FAA;

(2) The pilot program changes the FAA approval process by allowing a public agency to collect and use a PFC when the FAA acknowledges receipt of the notice of intent and the FAA does not object to the PFC; and

(3) The FAA's acknowledgment letter is not an agency final order for purposes of appeal to the U.S. Court of Appeals.

The FAA believes the pilot program will streamline the PFC process, as required by Congress. In addition, the pilot program will reduce the burden on public agencies and the FAA for a great number of PFC applications that make up a small percentage of total PFC revenue.

Vision 100 also contained several statutory changes that apply to the general PFC program. Some of these general statutory changes also apply to the pilot program.

First, Vision 100 limits the pool of air carriers a PFC applicant must contact during the consultation process, prior to submitting an application to the FAA. Under the proposed change, all PFC applicants (including pilot program applicants) need only contact air carriers with a significant business interest at an airport the public agency controls. This change is executed by adding a definition of significant business interest to the definitions section (§158.3) and amending the consultation with air carriers provisions (§158.23).

Second, Vision 100 adds a new requirement that PFC applicants publish a notice and provide an opportunity for the public to comment on the proposed PFC. This public comment provision is required whether a public agency is applying to impose a new PFC (under the general program or the pilot program) or amending a PFC. A second public comment period is required when a public agency applies to use a PFC (under the general program or the pilot program). This section is discussed below under new §158.24.

Third, Vision 100 streamlines the PFC application process by eliminating the past requirement that the FAA publish a public notice in the Federal Register for each PFC application. Under Vision 100, any publication in the Federal Register by the FAA is optional. This section is discussed below under §158.27.

Fourth, because Vision 100 requires the FAA to streamline the application process, the FAA is proposing to streamline the amendment process to bring parity between the two processes. The FAA proposes to streamline the amendment process for both the pilot program and the general PFC process. This section is discussed below under §158.37.

Fifth, this notice proposes several other administrative changes due to substantive changes created by Vision 100. These administrative changes include changing the application format to include and exclude requirements that Vision 100 changed. These changes are discussed below under §§158.25 and 158.29.

Section-by-Section Discussion of the Proposals

The section-by-section discussion of the NPRM is organized by the three types of changes this document proposes. First, this discussion addresses the Vision 100 statutory changes related to implementing the pilot program. These changes include defining "non-hub airport" in §158.3 and the new §158.30.

Next, this discussion reviews the statutory changes mandated by Vision 100 applicable to both the pilot program and the general PFC program. These changes include proposed changes to §§158.3 (definitions – definition of "significant business interest") and 158.23 (air carrier consultation), as well as a discussion of new §158.24 (public comment process). These changes are necessary to ensure that public agencies understand what is required to meet the air carrier consultation and public comment processes. In addition, changes to §158.37 (amendments), which is not a part of Vision 100, are discussed. The changes to the amendment process are necessary to ensure that

amending a PFC program established under the pilot program process is no more difficult than establishing the program.

Finally, this section-by-section discussion ends with a review of the changes to the general PFC program that do not apply to the pilot program. Sections 158.25 (application), 158.27 (review of applications), and 158.29 (the Administrator's decision) are changed because of provisions in Vision 100 that relate to or complement the changes to §§158.3 and 158.23 as well as the new §158.24.

Vision 100 Statutory Changes Creating a Non-hub Airport Pilot Program

Section 158.3 Definitions

The proposed rule will add the definition of "non-hub airport" to Part 158.

Before enactment of Vision 100, terms such as large, medium, small and non-hub airports were not statutorily defined. Vision 100 added definitions to all of these terms in Section 225 of that Act. The current Part 158 defines "large and medium hub" airports but does not include definitions of "small hub" or "non-hub" airports. Part 158 has had many procedures that are specific to large and medium hub airports but no procedures or requirements that are specific to small hub or non-hub airports. Vision 100 requires the FAA to create a pilot program to streamline the application process for non-hub airports as well as the FAA's processing of those applications. To comply with the statutory change, the proposed rule will define "non-hub airport" to identify which airports are eligible for the pilot program. Section 225 of Vision 100 defines a "non-hub airport" as "a commercial service airport (as defined in 49 U.S.C. §47102) that has less than 0.05 percent of the passenger boardings." The term "passenger boardings" is also defined in §225 as follows:

"(A) means, unless the context indicates otherwise, revenue passenger boardings in the United States in the prior calendar year on an aircraft in service in air commerce, as the Secretary determines under regulations the Secretary prescribes; and

"(B) includes passengers who continue on an aircraft in international flight that stops at an airport in the 48 contiguous States, Alaska, or Hawaii for a nontraffic purpose."

The definition of non-hub airport in §225 is the same definition used in the FAA's AIP grant program and National Plan of Integrated Airports. Therefore, public agencies familiar with the FAA's Airport programs should be familiar with this definition of "non-hub airport." Although Vision 100 defines a small-hub airport, the FAA is not including a definition of "small hub airport" in this rulemaking. The PFC program does not contain procedures or requirements specific to small hub airports, so there is no current need to define "small hub airport" in the PFC regulation.

The PFC regulation currently defines "passenger enplaned." Since this term is very similar to the term "passenger boardings," we are not including a "passenger boardings" definition in this rulemaking.

Section 158.30 Pilot Program for PFC Authorization at Non-Hub Airports.

The proposed rule will create a new §158.30 to comply with Vision 100's requirement to set up a pilot program to streamline the application process for non-hub airports.

The FAA's 2002 examination of the PFC program determined that about 60 percent of the applications processed over the previous five years were for non-hub airports. In addition, nearly 50 percent of the PFC projects at non-hub airports over the

study period provided either the local matching funds for AIP grants or supplemented AIP grants. A high percentage of the total PFC collections at non-hub airports were for airside projects, such as runways, taxiways and aprons, or for safety or security equipment, such as aircraft rescue and firefighting vehicles. Furthermore, only 2.3 percent of the nationwide approved PFC collections were for projects at non-hub airports. Based on these findings, the Congressional changes mandated by Vision 100 creating a pilot program should improve the application process for non-hub airports.

The pilot program will reduce the information a public agency must provide the FAA to gain approval to impose a PFC. Currently, a public agency must provide a detailed description and justification for any project proposed for PFC funding. In addition, the public agency must provide information on how the project meets at least one PFC objective or significant contribution finding. The public agency must also provide detailed project funding information as well as answer several questions about other requirements contained in §§158.27 and 158.29. The format required for each project requires an average of 6 pages of information per project.

In contrast, under §158.30, the public agency will provide a completed FAA Form 5500-1 PFC Application and summary project information. If a proposed project is not in an existing AIP grant, the public agency will have to provide certain additional information. A public agency will not have to provide as detailed a description or justification as in the general PFC process. In addition, the public agency is not required to discuss the PFC objective in as great a detail as is required in the general PFC process or those projects included in AIP grants. Thus, public agencies should be able to provide the necessary information for all projects on 1 or 2 pages.

Section 158.30(a) includes a general description of the intent of the pilot program. This subsection also discusses that a public agency may request the authority to only impose a PFC under the pilot program. A public agency may also request authority to both impose a PFC and use that PFC revenue in the same notice. Finally, a public agency may request authority to use PFC revenue previously approved for collection. These options are the same as those available to other public agencies using the application procedures under §158.25. Thus, the pilot program allows the same flexibility as the current application procedures to apply for various PFC authorities.

Sections 158.30(b) and 158.30(c) set forth the information that a public agency must include when notifying the FAA of its intent to impose and/or use a PFC under §158.30. All notices of intent filed under §158.30 must include consultation with air carriers pursuant to §158.23 and a public comment period pursuant to §158.24. This section-by-section discussion reviews these two sections later. All notices of intent under §158.30 filed with the FAA must also include a copy of all comments received during the consultation and public comment processes. In addition, the notice of intent must include the public agency's reasons for proceeding with the notice of intent for any particular project that has been subject to disagreement or negative comments during the consultation or public comment processes.

Section 158.30(b) sets forth the information required for a notice of intent to impose a PFC. Similarly, §158.30(c) sets forth the information required for a notice of intent to use PFC revenue. The primary difference between the two notices of intent is the requirement to provide airport layout plan (ALP), airspace, and environmental information for those projects for which the public agency is requesting to use PFC

revenue. Section 158.30(c) also contains additional requirements if the notice of intent to use PFC revenue is not filed concurrently with the notice of intent to impose a PFC.

The FAA has designed a form for use in the current PFC application process that has already received Office of Management and Budget approval (FAA Form 5500-1 PFC Application). This form includes an application sheet with blocks for general application information and a certification and signature section. The form also includes two attachment forms, one for project information and the other for information on how the various projects meet ALP, airspace, and environmental requirements. The pilot program will use the application sheet and, in some instances, the ALP, airspace, and environmental requirements attachment.

The pilot program will use these forms because they have been in use in the PFC program for several years. They are also available for download from the FAA's PFC web-page. These forms provide an easy format for information on:

(1) The airport where the PFC's will be collected;

(2) The airport or airports where it will be used;

(3) The total amount proposed to be collected and used; and

(4) The PFC level proposed for collection.

The application sheet also includes certifications about compliance with the PFC statute and regulation as well as PFC assurances.

A significant way in which the pilot program differs from the current program is the requirement to provide specific project information. The current application process requires detailed information about each project so the FAA can evaluate the eligibility and justification for each project. As discussed above, the FAA believes most projects

proposed at non-hub airports are projects that the FAA is familiar with because of its management of the AIP program. The FAA's 2002 study of the PFC program revealed that most projects at non-hub airports involve runways, taxiways, aprons, equipment and simple terminal work. These types of projects are generally non-controversial. The majority of these projects are duplicative of AIP grant projects. In addition, the FAA has a wealth of knowledge about the need for airside and safety improvements at most commercial service airports. The FAA has gained this knowledge through its participation in various airport planning efforts and airport certification programs. This is why the FAA has proposed that public agencies need only file limited project information in the pilot program.

The FAA is proposing that the pilot program distinguish between projects already in an existing AIP grant and those projects that are not. To be included in an AIP grant, the FAA must determine that a project is eligible and justified under the AIP program. In accordance with the provisions of §158.15(b)(1) – (5), planning and development projects that are eligible under the AIP program are also eligible under the PFC program. Thus, by determining that a project is eligible for an AIP grant, the FAA has also determined that the project meets PFC eligibility requirements. In addition, projects included in AIP grants must meet requirements identical with the PFC requirements on ALP, airspace, and environmental compliance. Therefore, the FAA is proposing in the pilot program that, for those projects already in an existing AIP grant, the public agency will provide:

(1) The title of the project;

(2) The PFC funds sought for the project; and

(3) The AIP grant number associated with the project.

For projects not currently included in an AIP grant, the FAA will require more information. This is because the FAA does not have a decision on record approving the eligibility or justification of the project. The FAA also does not have information on how the project meets the ALP, airspace, and environmental requirements. Therefore, besides the project title and PFC funds sought, the public agency will have to provide information on the project description and justification. This information must be detailed enough to allow the FAA to make determinations on eligibility, justification, and the extent to which the project meets a PFC objective. However, as mentioned above, the FAA is familiar with most types of projects the public agency may propose so this information will likely be brief. The FAA's 2002 study of the PFC program revealed that most projects at non-hub airports involve runways, taxiways, aprons, equipment and simple terminal work. The FAA expects that the types of projects submitted under the pilot program will be consistent with the types of projects submitted by non-hub airports in the past. To determine that ALP, airspace, and environmental requirements are met, the public agency will have to file FAA form 5500-1, Attachment G. This attachment is designed to allow completion without repetition of the same information for each project.

The FAA intends to develop a form or a series of forms for use in providing the information required by §158.30(b)(2) independently from this rule. However, the FAA encourages public agencies not to wait for this form's availability to file a notice of intent.

The criteria and standards the FAA will use to review any notice of intent filed under the pilot program are set forth in §158.30(d). The FAA will use the same criteria

and standards currently used in the PFC decision making process and are found in §§ 158.15, 158.17 and 158.29. These criteria and standards are proposed to be incorporated in §158.30(d)(2) – (3). The FAA's review of the notice of intent will be different depending on the AIP grant status of the projects. However, review of the public agency's consultation and public comment processes will be the same regardless of the AIP status of the projects.

The FAA has already made determinations on project eligibility and justification for projects in existing AIP grants. Therefore, the FAA will not duplicate that decision making in its pilot program review process for existing AIP projects. However, for those projects not included in existing AIP grants, the FAA will make eligibility and justification determinations.

Currently, the FAA approves, partially approves, or disapproves all PFC applications. However, the FAA will not approve or disapprove a public agency notice of intent under the pilot program (§158.30(e)). Rather, the FAA will acknowledge the public agency's notice of intent within 30 days of receipt of the notice of intent. This represents a savings of up to 90 days from the current application process. This acknowledgment will either agree with all proposed projects, object to some or all the proposed projects, or object to the notice of intent in its entirety.

The FAA will object to a project if it determines the project is not eligible or justified. In addition, for a project proposed for use authority, the FAA will object if the project does not meet ALP, airspace, or environmental requirements. Finally, the FAA will object to a project if an interested party raises an objection during the air carrier

consultation or public comment process and the FAA determines that the public agency did not adequately address this objection in its notice of intent.

The FAA will object to a notice in its entirety if the FAA determines the consultation process did not comply with §§158.23 and 158.24 and/or the FAA objects to all projects in the notice of intent.

In all cases, the FAA will provide the public agency with its reasons for any objections.

Once the FAA issues an acknowledgment letter, §158.30(f) sets forth the actions a public agency may take. If the FAA does not object to either a project or the notice of intent in its entirety, the public agency may implement its PFC program following the information in its notice of intent. If the FAA objects to a project, the public agency may not collect or use PFC revenue on that project. If the FAA objects to the notice of intent in its entirety, the public agency may not implement the PFC program proposed in that notice.

Even though the pilot program creates a separate application process, once the FAA acknowledges a notice, §158.30(f) requires the public agency to comply with all sections of Part 158 except for § 158.25.

The language in §158.30(g) sets forth the Vision 100 mandate that any FAA acknowledgement issued under this pilot program will not be considered an order issued by the Secretary. Therefore, these acknowledgments will not be subject to appeal to the U.S. Court of Appeals. This is in contrast to the FAA's current PFC decisions. Such decisions are considered to be orders issued by the Secretary and, can be appealed. However, since the FAA's acknowledgement letter will include the FAA's reasons for

any objections, the public agency will potentially be able to fix any identified problems and resubmit its request. Therefore, the FAA does not believe that the lack of appeal rights will be a detriment to filing for PFC authority under the pilot program procedures. The FAA notes that there has never been an appeal of a PFC decision for a non-hub airport filed with the U.S. Court of Appeals. The FAA reminds non-hub airports that the pilot program is optional and, alternatively, they may file an application under the procedures of §158.25, which includes the right to judicial review.

Finally, §158.30(h) incorporates the Vision 100 requirement that the pilot program will be in effect for 3 years from the date the final rule is enacted.

Vision 100 Statutory Changes Applicable to the General PFC Program

Section 158.3 Definitions

The proposed rule will add the definition of "significant business interest" to Part 158.

Before enactment of Vision 100, 49 U.S.C. §40117(c)(2) and current §158.23 required public agencies to provide notice to all air carriers and foreign air carriers operating at the airport. Vision 100 modifies 49 U.S.C. §40117(c)(2) to limit the public agency notice requirement to carriers with a "significant business interest" at the airport. Therefore, the FAA proposes to revise §158.23 to comply with the statutory change, limiting public agency notice to carriers with a "significant business interest" at the airport. However, Part 158 does not define the term "significant business interest," and that phrase is an integral part of the modified PFC process. Based on this change, the proposed rule will provide such a definition, using the following definition from §123(a)(1) of Vision 100:

"...an air carrier or foreign air carrier that had no less than 1.0 percent of passenger boardings at the airport in the prior calendar year, had at least 25,000 passenger boardings at the airport in the prior calendar year, or provides scheduled service at the airport."

Section 158.23 Consultation with air carriers and foreign air carriers.

As discussed in the definitions section, §158.23 currently requires public agencies to consult with all air carriers and foreign air carriers before filing a PFC application and before seeking certain amendments to a previously approved PFC.

49 U.S.C. §40117(c)(2) is the basis for this section. As discussed above, §123(a) of Vision 100 modified 49 U.S.C. §40117(c)(2), with the following:

"(F) For the purposes of this section, an eligible agency providing notice and an opportunity for consultation to an air carrier or foreign air carrier is deemed to have satisfied the requirements of this paragraph if the eligible agency limits such notices and consultations to air carriers and foreign air carriers that have a significant business at the airport. In the subparagraph, the term 'significant business interest' means an air carrier or foreign air carrier that had no less than 1.0 percent of passenger boardings at the airport in the prior calendar year, had at least 25,000 passenger boardings at the airport in the prior calendar year, or provides scheduled service at the airport."

To comply with the statutory change, the proposed rule limits the required consultation to only those air carriers and foreign air carriers having a significant business interest at the airport.

Vision 100 modifies the carrier consultation requirements by dropping the requirement that the public agency consult with all air carriers and foreign air carriers

who have operated at the airport during the previous year. Vision 100 substitutes in its place a requirement that the public agency consult with carriers having a significant business interest at the airport. The FAA notes that the Vision 100 definition of significant business interest would capture all carriers that have filed consultation comments on the various PFC applications over the last five years.

However, the FAA notes that the definition of a carrier with a significant business interest at the airport may create possible confusion in certain situations. Under §158.11, a public agency may request to exclude a class of carriers from the requirement to collect the PFC. The public agency is not required to consult with carriers that are a part of a proposed excluded class.

One possible excluded class is a carrier or carriers flying to a particular isolated community. If designated as an excluded class, a carrier may thus be exempt from collecting a PFC for a specific flight under §158.11(2) but also qualify as having a significant business interest at the airport because of its other operations. The exemption in §158.11 is regulatory and based on FAA discretion while the significant business interest notice requirement in Vision 100 is statutory. Because of the statutory requirement, if a public agency determines that a carrier has a significant business interest in its airport, the FAA will not approve the public agency's request under §158.11 to avoid consultation with that carrier. This is the case even if the public agency would otherwise be able to use the exemption. The FAA notes that an air carrier need only provide scheduled service to qualify as a significant business interest under the statutory definition.

Vision 100 also requires that non-hub airports participating in the pilot program must follow the same significant business interest notice requirements as all other PFC applicants. Therefore, proposed §158.23 requires participating pilot program public agencies to follow the significant business interest notice requirements. For further discussion of non-nub pilot program requirements see the discussion of proposed §158.30.

Section 158.24 Notice and opportunity for public comment.

Before enactment of Vision 100, public agencies were not required by statute or regulation to seek public comment of proposed PFC's. Only the FAA was so required. This occurred after the public agency filed the PFC application for FAA approval. Public agencies were only required to consult with all air carriers at an airport, not with the public. Vision 100 now requires public agencies to seek public comment before filing a PFC application with the FAA. Section 123(a)(3) of Vision 100 amends 49 U.S.C. §40117(c) by inserting the following:

"(3) Before submitting an application, the eligible agency must provide reasonable notice and an opportunity for public comment. The Secretary shall prescribe regulations that define reasonable notice and provide for at least the following under this paragraph;

"(A) A requirement that the eligible agency provide public notice of intent to collect a passenger facility fee so as to inform those interested persons and agencies that may be affected. The public notice may include—

"(i) publication in local newspapers of general circulation;

"(ii) publication in other local media; and

"(iii) posting the notice on the agency's Internet website.

"(B) A requirement for submission of public comments no sooner than 30 days, and no later than 45 days, after the date of the publication of the notice.

"(C) A requirement that the agency include in its application or notice submitted under subparagraph (A) copies of all comments received under subparagraph (B)."

To comply with this statutory change, the proposed rule will create a new §158.24 that requires public agencies to provide reasonable notice and an opportunity for public comment. Public agencies must comply with this notice requirement before filing with the FAA an application to collect a PFC or a notice of intent to impose or use a PFC under the non-hub pilot program. The goal of this requirement is to provide notice and the opportunity to comment to the public of the potential existence of a PFC that may affect them. The public will have the opportunity to provide comments based on a detailed notice, before the public agency files a PFC application or a non-hub pilot program notice of intent with the FAA.

In determining what constituted a reasonable notice, the FAA looked at the information that public agencies must provide in the consultation notice and at the air carrier consultation meeting. Information on any proposed excluded class of carriers was deemed unnecessary for the public comment process.

A requirement that the public agency provide information on the class of carriers it proposes to exclude was not included among the requirements of the public comment notice. In the FAA's 2002 examination of the PFC program, the FAA found there were no comments filed during the air carrier consultation about a proposed excluded class of

carriers. Similarly, there were no comments filed in response to the FAA's Federal Register notice about a proposed excluded class of carriers.

Based on the existing consultation process requirements, the FAA is proposing that a reasonable public notice must contain the following items:

(1) A description of each project the public agency proposes to fund with the PFC. The FAA expects that this description could be as brief as, for example, "extend taxiway A 500 feet to the north". However, the description must be more than, for example, "airfield pavements." It must clearly identify the proposed work.;

(2) A brief justification for each project the public agency proposes to fund with the PFC. The public agency must make available a more detailed justification or justification documents upon request of the public. A more detailed project justification is not included in the public comment process for two reasons. First, a discussion of a project's justification may be complex in nature, requiring information that could far exceed the intended scope of the public comment notice. Second, most proposed projects are also in the public agency's airport master plan and/or environmental documents and the public has an opportunity to comment on these projects through other means. The FAA believes that reasonable public notice should not require that the public agency duplicate other processes. Thus, the proposed rule does not include a requirement to provide detailed project justification in the public comment notice.

(3) The PFC level for each project;

(4) The estimated amount of PFC revenue the public agency will use for each project;

(5) The proposed charge effective date for the application or notice of intent;

(6) The estimated charge expiration date for the application or notice of intent;

(7) The estimated total PFC revenue the public agency will collect for the application or notice of intent; and,

(8) The name of and contact information for the person within the public agency to whom comments should be sent.

The public agency must make the notice available to interested parties through one or more of the following methods:

(1) Publication in a local newspaper,

(2) Publication in other local media,

(3) Posting on the public agency's website, or

(4) Some other method acceptable to the FAA.

The FAA added the fourth option, "other methods acceptable to the FAA," to those in Vision 100 to increase the flexibility available to the public agencies. The FAA advises that if a public agency wishes to use an alternative method, it must first discuss the method with the FAA to make sure the method is acceptable. In general, the FAA will expect the public agency to use a method of publication that is readily available to most of the local community. The public agency may also wish to provide this notice to air carriers who do not meet the definition of a significant business interest under §158.23. This could be accomplished by posting the notice with fixed base operators or similar common areas on the airport or in national trade publications.

To comply with Vision 100, the proposed rule also directs the public agency to establish a comment period of between 30 and 45 days. This comment period starts on the day after the date of publication of the notice.

Finally, as noted above, this public comment period is required for both general PFC applications and for those participating in the non-hub airport pilot program. The discussion of proposed §158.30 contains further details on the non-hub pilot program.

Section 158.37 Amendment of approved PFC.

There is no statutory provision controlling amendments, even after the enactment of Vision 100. The PFC amendment process is controlled solely by FAA regulation, under §158.37, based on the FAA's discretion. This allows for flexibility in the public agency's management of its PFC program.

Under existing §158.37, there are two different procedures used by public agencies to amend PFC decisions. The first method applies when the public agency seeks to:

(1) Decrease the total amount of PFC revenue approved for collection,

(2) Decrease the PFC level to be collected from each passenger, or

(3) Increase the amount being collected by 15 percent or less of the total approved for collection.

This method allows the change to go into effect without the consultation or approval of the FAA. However, FAA policy is to issue a letter acknowledging the changes. The FAA usually issues this letter between 30 and 60 days of the date of the public agency's notice. The public agency also does not have to consult with air carriers before implementing changes under this method of amendment process. However, the

public agency must notify the collecting air carriers and the FAA of a change due to this amendment process.

The second method applies when the public agency seeks to:

(1) Increase the PFC level to be collected from each passenger,

(2) Materially alter the scope of an approved project,

(3) Increase the total approved PFC revenue by more than 15 percent, or

(4) Establish or amend a class of carriers which is to be excluded from the requirement to collect the PFC.

This method requires the public agency to apply to the FAA for approval of the amendment request. This method also requires the public agency to undertake consultation with the air carriers before filing the amendment application. The FAA will process an amendment filed under the second method in one of two ways.

First, if there is no carrier disagreement to the proposed amendment actions, the FAA will evaluate the amendment application and issue its decision within 30 days of receipt of the application.

Alternatively, if there is carrier disagreement to one or more of the proposed amendment actions, the FAA will evaluate the amendment application as well as any disagreements presented during the consultation process. Under these procedures, the FAA has the option of publishing a Federal Register notice seeking public comment on the proposed amendment actions. If there is a notice, the FAA will include any comments received because of the notice in its analysis of the amendment request. The FAA will issue its decision within 120 days of receipt of the amendment application.

In part because of the statutory streamlining changes contained in Vision 100, the FAA has decided to change the amendment procedures because they should not be more complicated than the initial application rules.

Furthermore, the FAA's experience with the current regulation leads to the conclusion that several of the current amendment procedures are confusing to public agencies. The areas of confusion mostly center on:

(1) When a public agency must conduct additional consultation;

(2) What constitutes a material change in the scope of the project; and

(3) How to determine if a request to increase PFC revenue is above the 15 percent threshold.

In addition, the FAA has identified a concern that a public agency could make a major increase in the PFC's dedicated to one project while at the same time decreasing the PFC's on another project. A public agency could thus avoid the requirement for further air carrier consultation. The FAA believes actions of this type undermine the intent of the air carrier consultation provision.

The proposed rule will revise this section to streamline the PFC amendment procedures. The revisions to §158.37 will create only one procedure for public agencies to use when seeking to amend PFC decisions. It will also assure that the FAA processes non-controversial amendments promptly. The proposed revisions to the amendment rules will continue to provide flexibility to the public agencies by allowing them to change approved projects, increase or decrease the PFC level, and otherwise respond quickly when financial or technical changes in a project are necessary.

Section 158.37(a) discusses the types of actions for which an amendment is allowed and those for which one is not allowed. Allowable actions will include:

(1) Increasing or decreasing the PFC level to be charged to a passenger;

(2) Changing the scope of a project;

(3) Increasing or decreasing the amount of PFC revenue to be used on a project; and

(4) Establishing or amending an excluded class of carriers.

The new language deletes the term "materially alter the scope of an approved project" as a basis for an amendment since this term has caused much of the confusion. A public agency may still alter a project description, which will now be called a change of scope. The amendment rules limit the changes that a public agency can make. Changing the scope of a project by amendment must remain true to the nature and structure of the approved project. Changing approved projects to a different type of project, adding new unrelated work elements, or constructing the same type of project for a different purpose than a project previously approved by the FAA, are new projects. These types of modifications require processing as a new application, rather than as an amendment.

Examples of changing the scope include:

(1) Trying to amend an approved taxiway construction project to include extending a runway; and

(2) Trying to amend an approved facility construction project to include the same type of facility but at a different location. For example, a request to amend a

taxiway construction project approved for one side of the airfield to add taxiway construction on the opposite side of the airfield will be unacceptable.

Another change to the rule is that increases and decreases of PFC revenue will be calculated on a project-by-project basis, rather than as a change in the total amount approved for an application. In addition, the FAA is proposing that an increase of more than 25 percent above the original approved amount for a project be the threshold to determine if the opportunity for additional consultation and public comment is needed. These changes should address the cause for some of the public agencies' confusion as well as addressing the FAA's concern about significant funding changes.

Under the new §158.37(b), any public agency requesting an amendment must receive approval from the FAA. The amendment application will include a description of the proposed amendment. The public agency must provide justification for the amendment if it includes a change in the scope of the project or an increase in the total approved PFC revenue for a project. In addition, public agencies of large and medium hub airports must provide a discussion on how the project meets the significant contribution requirement of §158.17(b), for any project in the amendment seeking to increase the PFC level above $3.00.

The public agency must follow the air carrier consultation and public comment requirements of §§158.23 and 158.24 if the amendment request is to:

(1) Increase the original PFC amount for any project by more than 25 percent;

(2) Change the scope of a project; or

(3) Increase the PFC level.

The public agency must also include copies of any comments received during the carrier consultation and public comment processes in its amendment request. This requirement ensures that all interested parties have the opportunity to provide comments on significant changes to the approved PFC program.

Section 158.37(c) provides the FAA's decision-making procedures for amendments. The FAA must either approve, partially approve or disapprove each amendment request within 30 days of the FAA's receipt of the request. In deciding, the FAA will consider whether the amendment is within the structure of the approved project and whether the project costs are reasonable and necessary for accomplishing the approved project. The FAA will also consider any comments filed during the consultation and public comment processes before reaching a decision.

Finally, to assure proper PFC collections, §158.37(d) requires the public agency to notify the carriers of any change to the approved PFC resulting from an amendment. In addition, the effective date of any new PFC level must be no earlier than the first day of a month that is at least 30 days from the date the public agency notifies the carriers.

As noted above, the proposed PFC amendment procedures apply to both general PFC applications and non-hub airport pilot program notices of intent.

Section 158.25 Applications.

The proposed rule makes several changes to this section. Most of these changes are necessary to conform to the changes in other sections of Part 158 called for by Vision 100 and as discussed above. The other changes to this section streamline procedures in keeping with the intent of Vision 100.

The modifications proposed in §§158.25(a), 158.25(c)(1)(i), 158.25(c)(1)(ii) and 158.25(c)(2)(ii)(A)-(C) specify that a public agency must use FAA Form 5500-1 (latest edition) and all applicable Attachments when filing a PFC application under this section. When Part 158 was issued in 1991, the FAA had not developed PFC application forms. Rather than delay implementing the program while waiting for forms to be developed and approved for use, the regulation stated that public agencies should file a PFC application in a manner and form prescribed by the Administrator. Since then, the FAA has developed an application form that the Office of Management and Budget has approved for use. This current version of the application form has been in use, with minor modifications, since 2000.

The proposed rule will change §158.25(b)(11) to be consistent with the change to §158.23 limiting consultation to only those carriers with a significant business interest at the airport. This proposed rule will also change §158.25(b)(11) to include the requirement for a public comment period under new §158.24. This new language will require public agencies to treat comments received from the public in a manner similar to the way they treat comments from air carriers under the existing rules.

The proposed rule will also create a new §158.25(b)(14) to incorporate the requirement in Vision 100 that public agencies include a copy of all comments received during the air carrier consultation and public comment processes in the PFC application. Section 123(a)(1) of Vision 100 amends 49 U.S.C. §40117(c) by adding the following to the end of paragraph (2):

"(E) The agency must include in its application or notice submitted under subparagraph (A) copies of all certifications of agreement or disagreement received under subparagraph (D)."

The FAA notes that many public agencies already voluntarily include copies of the certifications of agreement and disagreement filed by the air carriers during the consultation process.

The proposed rule will also change §§158.25(c)(1)(i) and 158.25(c)(2)(i). These paragraphs set forth the requirements for applications seeking authority to use PFC revenue. Currently, such applications require much of the same information that public agencies previously filed with their applications for authority to impose the PFC. This is the case even if that information has not changed. The proposed changes will allow public agencies to incorporate much of the prior information by reference if nothing has changed since the FAA approved the impose authority application. These changes will streamline this process and remove duplicative information.

Finally, the last sentence in §158.25(a) will be changed. It currently states that an application that will be "..in a manner and form prescribed by the Administrator." The new sentence will refer to the actual application. Based on this change, all other sentences in §158.25 with the old application reference will change to the new application reference under the proposed rule.

Section 158.27 Review of applications.

Before enactment of Vision 100, 49 U.S.C. §40117(c)(3) and current §158.27(c)(2) required the FAA to publish a notice in the Federal Register of its intent to

rule on an application. This notice invites public comment about the pending application and sets forth specific information about the proposed PFC.

Section 123(a)(4) of Vision 100 amends 49 U.S.C. §40117(c)(4) (redesignated from 49 U.S.C. §40117(c)(3)) by striking "shall" and inserting "may." This statutory change allows the FAA the option of publishing a notice in the Federal Register rather than requiring the notice. To comply with the statute, the proposed rule changes §§158.27(c)(2), 158.27(c)(3) and 158.25(c)(4) to incorporate this statutory change by making the Federal Register notice optional.

The FAA expects that it will publish a notice in the Federal Register only for those applications with significant issues or public controversy. The FAA generally views intermodal ground transportation access projects as significant because they connect to off-airport transit systems and because they can be quite costly. In addition, when a terminal project involves airline competition or leasing, the FAA is also likely to consider it significant. The FAA has found that terminal projects involving competition or leasing may be perceived as benefiting one carrier over another and, thus, require more Federal scrutiny. In addition, terminal projects are often financed with significant amounts of PFC revenue. Finally, the FAA will analyze comments received as a result of both the airline consultation and the public comment processes and may publish a Federal Register notice if there are issues raised during these processes that are controversial. This change will enable the FAA to issue non-controversial decisions in as few as 45 to 60 days rather than the current standard of 75 to 120 days.

Section 158.29 The Administrator's decision.

The proposed rule will change §158.29(c)(2) to include a reference to the new §158.24 (public comment). If the FAA has disapproved an application or a project, §158.29(c)(2) sets forth the requirements to reapply for PFC approval. The regulation currently requires that the public agency comply with the air carrier consultation requirements of §158.23 before resubmitting an application. The FAA has determined that compliance with §158.24 should also be a requirement for any action under §158.29(c)(2).

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no current new information collection requirements associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a

regulation only upon a determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. §§ 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this rule (1) has benefits that justify its costs, is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant economic impact on a substantial number of small entities; (3) will have a neutral trade impact; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

Total Costs and Benefits of this Rulemaking

The estimated net cost saving of this proposed rule is estimated at $3,550,000 or $2,544,850, discounted. Although the pilot program would terminate after 3 years, the other proposed provisions would continue. Airports are estimated to have net cost

savings over a 10-year period of $3,075,000 or $2,211,250, discounted. The FAA is estimated to have net cost savings of $475,000 over a 10-year period or $333,600, discounted. Air carriers would incur only minimal costs in adjusting to the proposed changes to Part 158.

Who is Potentially Affected by this Rulemaking

Commercial airports, air carriers servicing these airports and the traveling public using these airports.

Our Cost Assumptions and Sources of Information

- Discount rate – 7%
- Period of analysis – 2005-2007 for savings associated with the pilot program and 2005-2014 for proposed regulatory changes.
- Monetary values expressed in 2003 dollars.

Costs (per individual action):

Airport cost to notify and consult with an air carrier regarding a PFC application	$175
Airport cost to solicit and include public comment on PFC application	$600
Airport cost (non-hub airports) to file a PFC application	$5,000
Airport cost-savings for PFC use application	$5,000
Airport cost-savings for PFC amendment	$1,667
FAA cost of Federal Register notice	$500

These cost figures are based on the results of a study conducted by the FAA, the FAA's experience with the administration of the PFC program, and as part of figures determined for paperwork reduction analysis.

Alternatives We Considered

The FAA hired a consultant to review past PFC records of decisions and other related materials to assess whether certain PFC procedures could be streamlined. On the basis of the study, the FAA put forward several ideas for streamlining the PFC process as part of the Administration's Reauthorization proposal. Many of these proposals were incorporated into the Vision 100 law.

Benefits of this Rulemaking

The FAA estimates that the net effect of the proposed changes would be a decrease in cost for airports and have a neutral effect on air carriers and airline passengers.

Cost of this Rulemaking

Airports would realize net cost savings over a 10-year period of $3,075,000 or $2,211,300, discounted.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) directs the FAA to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation. We are required to determine whether a proposed or final action will have a "significant economic impact on a substantial number of small entities" as they are defined in the Act. If we find that the action will have a significant impact, we must do a "regulatory flexibility analysis."

The FAA has determined that this proposed rule will not impose costs on small commercial service airports. Rather, costs associated with this proposed rule will be limited to only what is authorized by statute. Moreover, actual PFC collection authority

is not affected by the proposal and all costs are fully recoverable through the PFC, if necessary, by small adjustments in the period of PFC collection. The FAA estimates that a small airport will realize net cost-savings of approximately $9,400 annually under the proposed rule.

The FAA conducted the required review of this proposed rule and determined that it will not have a significant economic impact. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FAA certifies that this proposed rule will not have a significant impact on a substantial number of small entities. The FAA seeks public comments regarding this finding and requests that al comments be accompanied with detailed supporting data.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and has determined that, to the extent it imposes any costs affecting international entities, it will impose the same costs on domestic and international entities for comparable services, and thus has a neutral trade impact.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and

tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This proposed rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore would not have federalism implications.

Plain English

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

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

- Is the description in the preamble helpful in understanding the proposed regulations?

Please send your comments to the address specified in the ADDRESSES section.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 158

Air carriers, Airports, Passenger facility charge, Public agencies, Collection compensation.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 158 of Title 14, Code of Federal Regulations, as follows:

PART 158—PASSENGER FACILITY CHARGES (PFC'S

1. The authority citation for part 158 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40116-40117, 47106, 47111, 47114-47116, 47524, 47526.

2. Amend §158.3 to add the following definitions:

§158.3 Definitions.

* * * * *

Non-hub airport means a commercial service airport (as defined in 49 U.S.C. 47102) that has less than 0.05 percent of the passenger boardings in the U.S. in the prior calendar year on an aircraft in service in air commerce.

* * * * *

Significant business interest means an air carrier or foreign air carrier that:

(i) 1 Had no less than 1.0 percent of passenger boardings at that airport in the prior calendar year,

(ii) 2 Had at least 25,000 passenger boardings at the airport in that prior calendar year, or

(iii) 3 Provides scheduled service at that airport.

* * * * *

3. Amend §158.23 by revising paragraph (a) introductory text to read as follows:

§158.23 Consultation with air carriers and foreign air carriers.

(a) *Notice by public agency.* A public agency must provide written notice to air carriers and foreign air carriers having a significant business interest at the airport where the PFC is proposed. A public agency must provide this notice before the public agency files an application with the FAA for authority to impose a PFC under §158.25(b). In addition, public agencies must provide this notice before filing an

application with the FAA for project approval under §158.25(c). Public agencies must also provide this notice before filing a notice of intent to impose and/or use a PFC under §158.30. Finally, a public agency must provide this notice before filing a request to amend a previously approved PFC as discussed in §158.37(b)(1).

The notice shall include:

* * * * *

4. Add §158.24 to read as follows:

§158.24 Notice and opportunity for public comment.

(a) *Notice by public agency.* A public agency must provide written notice and an opportunity for public comment before:

(1) Filing an application with the FAA for authority to impose a PFC under §158.25(b);

(2) Filing an application with the FAA for project approval under §158.25(c);

(3) Filing a notice of intent to impose and/or use a PFC under §158.30; and

(4) Filing a request to amend a previously approved PFC as discussed in §158.37(b)(1).

The notice must allow the public to file comments for at least 30 days, but no more than 45 days, after the date of publication of the notice or posting on the public agency's website, as applicable.

(b) *Notice contents.* The notice required by §158.24(a) must include:

(1) A description of the project(s) the public agency is considering for funding by PFC's;

(2) A brief justification for each project the public agency is considering for funding by PFC's;

(3) The PFC level for each project;

(4) The estimated total PFC revenue the public agency will use for each project;

(5) The proposed charge effective date for the application or notice of intent;

(6) The estimated charge expiration date for the application or notice of intent;

(7) The estimated total PFC revenue the public agency will collect for the application or notice of intent; and

(8) The name of and contact information for the person within the public agency to whom comments should be sent.

The public agency must make available a more detailed project justification or the justification documents to the public upon request.

(c) *Distribution of notice.* The public agency must make the notice available to the public and interested agencies through one or more of the following methods:

(1) Publication in local newspapers of general circulation;

(2) Publication in other local media;

(3) Posting the notice on the public agency's Internet website; or

(4) Any other method acceptable to the Administrator.

Revise to read as follows:

5. ~~Amend~~ §158.25 ~~by revising paragraphs (a), (b)(11), (b)(11)(iv), (c)(1)(i), (c)(1)(ii), (c)(1)(iv), (c)(2)(i), and (c)(2)(ii)(A) through (C), by adding~~ new paragraphs ~~(b)(11)(iv) and (b)(14), by deleting paragraph and (c)(1)(iii)~~ and renumbering paragraphs

~~(b)(11)(iv) to (b)(11)(v), (b)(14) to (b)(15), (b)(15) to (b)(16), (b)(16) to (b)(17) and (c)(1)(iv) to (c)(1)(v) to read as follows:~~

§158.25 Applications.

(a) *General.* This section specifies the information the public agency must file when applying for authority to impose a PFC and for authority to use PFC revenue on a project. A public agency may apply for such authority at any commercial service airport it controls. The public agency must use the proposed PFC to finance airport-related projects at that airport or at any existing or proposed airport that the public agency controls. A public agency may apply for authority to impose a PFC before or concurrent with an application to use PFC revenue. The public agency may file an application. If a public agency chooses to apply, it must do so by using FAA Form 5500-1, PFC Application (latest edition) and all applicable Attachments. The public agency must provide 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) and (if a PFC level above $3 is requested) the requirements of §158.17. In addition --

(i) 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 excepted results of such initiatives; or

(ii) For any terminal development project at a covered airport, the public agency shall submit a competition plan in accordance with §158.19.

(8) The charge to be imposed for each project.

(9) The proposed charge effective date.

(10) The estimated charge expiration date.

(11) Information on the consultation with air carriers and foreign air carriers having a significant business interest at the airport and the public comment process, 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;

(iv) Information on which method under §158.24(b) the public agency used to meet the public notice requirement; and

(v) A summary of substantive comments by carriers contained in any certifications of disagreement with each project and disagreements with each project provided by the public, and the public agency's reasons for continuing despite of such disagreements.

(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 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 the consultation.

(14) A copy of all comments received as a result of the carrier consultation and public comment processes.

(15) 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.

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

(17) 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) FAA Form 5500-1 without attachments except as required below;

(ii) For any projects where there have been no changes since the FAA approved authority to impose a PFC for those projects, a list of projects included in this application for use authority. The FAA will consider the information on these projects, filed with the impose authority application, incorporated by reference;

(iii) For any project that has changed since receiving impose authority, the public agency must file an Attachment B for that project clearly describing the changes to the project; and

(iv) An FAA Form 5500-1, Attachment G, Airport Layout Plan, Airspace, and Environmental Findings (latest edition) providing the following information:

(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.

(v) The information required by §§158.25(b)(16) and 158.25(b)(17).

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

(i) Must not be filed until the public agency conducts further consultation with air carriers and foreign air carriers under §158.23. However, the meeting required under §158.23(a)(4) is optional if there are no changes to the projects after approval of the impose authority and further opportunity for public comment under §158.24; and

(ii) Must include a summary of further air carrier consultation and the public agency's response to any disagreements submitted under the air carrier consultation and public comment processes conducted under paragraph (c)(2)(i) of this section;

(iii) Must include the following, updated and changed where appropriate:

(A) The information required under (c)(1)(i) of this section;

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

(C) The information required by §§158.25(b)(16) and 158.25(b)(17).

6. Amend §158.27 by revising paragraphs (c)(2), (c)(3), and (c)(4) to read as follows:

§158.27 Review of applications.

* * * * *

(c) * * *

(2) The Administrator may opt to publish a notice in the FEDERAL REGISTER advising that the Administrator intends to rule on the application and inviting public comment, as set forth in paragraph (e) of this section. If the Administrator publishes a notice, the Administrator will provide a copy of the notice to the public agency.

(3) If the Administrator publishes a notice, the public agency--

* * * * *

(4) After reviewing the application and any public comments received from a FEDERAL REGISTER notice, the Administrator issues a final decision approving or disapproving the application, in whole or in part, before 120 days after the FAA Airports office received the application.

* * * * *

7. Amend §158.29 by revising paragraph (c)(2) to read as follows:

§158.29 The Administrator's decision.

* * * * *

(c) * * *

(2) A public agency reapplying for approval to impose or use a PFC must comply with §§158.23, 158.24, and 158.25 of this part.

* * * * *

8. Add §158.30 to subpart A to read as follows:

§158.30 Pilot Program for PFC Authorization at Non-Hub Airports.

(a) *General.* This section specifies the procedures a public agency controlling a non-hub airport must follow when notifying the FAA of its intent to impose a PFC and to use PFC revenue on a project under this section. In addition, this section describes the FAA's rules for reviewing and acknowledging a notice of intent filed under this section. A public agency may notify the FAA of its intent to impose a PFC before or concurrent with a notice of intent to use PFC revenue. A public agency must file a notice of intent in the manner and form prescribed by the Administrator and must include the information required under paragraphs (b), (c), or both, of this section.

(b) *Notice of intent to impose a PFC.* This paragraph sets forth the information a public agency must file to notify the FAA of its intent to impose a PFC under this section. The public agency must file a separate notice of intent for each airport at which the public agency plans on imposing a PFC. An authorized official of the public agency must sign the notice of intent and, unless authorized by the Administrator, must include:

(1) A completed FAA Form 5500-1, PFC Application (latest edition) without attachments except as required below;

(2) Project information (in the form and manner prescribed by the FAA) including the project title, PFC funds sought, PFC level sought, and, if an existing Airport Improvement Program (AIP) grant already covers this project, the grant agreement number.

(3) If an existing AIP grant does not cover this project, the notice of intent must include the information in (b)(2) as well as the following:

(i) Additional information describing the proposed schedule for the project,

(ii) A description of how this project meets one of the PFC objectives in §158.15(a), and

(iii) A description of how this project meets the adequate justification requirement in §158.15(c).

(4) A copy of any comments received by the public agency during the air carrier consultation and public comment processes (§158.23 and §158.24) and the public agency's response to any disagreements.

(5) If applicable, a request to exclude a class of carriers from the requirement to collect the PFC (§158.11).

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

(7) Any additional information the Administrator may require.

(c) *Notice of intent to use PFC revenue.* A public agency may use PFC revenue only for projects included in notices filed under this paragraph or approved under §158.29. This paragraph sets forth the information that a public agency must file, unless

otherwise authorized by the Administrator, in its notice of intent to use PFC revenue to finance specific projects under this section.

(1) A notice of intent to use PFC revenue filed concurrently with a notice of intent to impose a PFC must include:

(i) The information required under paragraphs (b)(1) through (7) of this section;

(ii) A completed FAA Form 5500-1, Attachment G, Airport Layout Plan, Airspace, and Environmental Findings (latest edition) for all projects not included in an existing Federal airport grant program grant.

(2) A notice of intent to use PFC revenue where the FAA has previously acknowledged a notice of intent to impose a PFC must:

(i) Be preceded by further consultation with air carriers and the opportunity for public comment under §158.23 and §158.24 of this part. However, a meeting with the air carriers is optional if all information is the same as that provided with the impose authority notice;

(ii) Include a copy of any comments received by the public agency during the air carrier consultation and public comment processes (§158.23 and §158.24) and the public agency's response to any disagreements or negative comments; and

(iii) Include any updated and changed information:

(A) Required by paragraphs (b)(1), (2), (5) (6), and (7) of this section; and

(B) Required by paragraph (c)(1)(ii) of this section.

(d) *FAA review of notices of intent.* The FAA will review the notice of intent to determine that:

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

(2) Each proposed project meets the requirements of §158.15;

(3) Each project proposed at a PFC level above $3 meets the requirements of §158.17(a)(2) and (3);

(4) All applicable airport layout plan, airspace, and environmental requirements have been met for each project;

(5) Any request by the public agency to exclude a class of carriers from the requirement to collect the PFC is reasonable, not arbitrary, nondiscriminatory, and otherwise complies with the law; and

(6) The consultation and public comment processes complied with §158.23 and §158.24.

The FAA will also make a determination regarding the public agency's compliance with 49 U.S.C. 47524 and 47526 governing airport noise and access restrictions and 49 U.S.C. 47107(b) governing the use of airport revenue. Finally, the FAA will review all comments filed during the air carrier consultation and public comment processes.

(e) *FAA acknowledgment of notices of intent.* Within 30 days of receipt of the public agency's notice of intent about its PFC program, the FAA will issue a written acknowledgment of the public agency's notice. The FAA's acknowledgment may concur with all proposed projects, may object to some or all proposed projects, or may object to the notice of intent in its entirety. The FAA's acknowledgment will include the reason(s) for any objection(s).

(f) *Public agency actions following issuance of FAA acknowledgment letter.* If the FAA does not object to either a project or the notice of intent in its entirety, the public agency may implement its PFC program. The public agency's implementation must follow the information specified in its notice of intent. If the FAA objects to a project, the public agency may not collect or use PFC revenue on that project. If the FAA objects to the notice of intent in its entirety, the public agency may not implement the PFC program proposed in that notice. When implementing a PFC under this section, except for §158.25, a public agency must comply with all sections of Part 158.

(g) *Acknowledgment not an order.* An FAA acknowledgment issued under this section is not considered an order issued by the Secretary for purposes of 49 U.S.C. 46110 (Judicial Review).

(h) *Sunset provision.* This section will expire 3 years after the date of enactment of the final rule.

9. Revise ~~Amend~~ §158.37 ~~by revising paragraphs (a) and (b) and adding new paragraphs (c) and (d)~~ to read as follows:

§158.37 Amendment of approved PFC.

(a)(1) A public agency may amend an approved PFC to:

(1) Increase or decrease the level of PFC the public agency wants to collect from each passenger,

(2) Increase or decrease the total approved PFC revenue,

(3) Change the scope of an approved project,

(4) Delete an approved project, or

(5) Establish a new class of carriers under § 158.11 or amend any such class previously approved.

A public agency may not amend an approved PFC to add projects, change an approved project to a different facility type, or alter an approved project to accomplish a different purpose.

(b) The public agency must file a request to the Administrator to amend an approved PFC decision. The request must include or demonstrate:

(1)(A) Further consultation with the air carriers and foreign air carriers and seek public comment in accordance with §§158.23 and 158.24 when applying for those requests to:

(i) Amend the approved PFC amount for a project by more than 25 percent of the original approved amount,

(ii) Change the scope of a project, or

(iii) Increase the PFC level.

(B) No further consultation with air carriers and foreign air carriers or public comment is required by a public agency in accordance with §§158.23 and 158.24 when applying for an amendment in the following situations:

(i) To institute a decrease in the level of PFC to be collected from each passenger; or

(ii) To institute a decrease in the total PFC revenue; or

(iii) To institute an increase of 25 percent or less for any approved PFC project; or

(iv) To establish a new class of carriers under §158.11 or amend any such class previously approved.

(2) A copy of any comments received from the processes in (b)(1)(A) above for the carrier consultation and the opportunity for public comment in accordance with §§158.23 and 158.24;

(3) The public agency's reasons for continuing despite any objections;

(4) A description of the proposed amendment;

(5) Justification, if the amendment involves a change in the PFC amount for a project by more than 25 percent of the original approved amount, a change of the approved project scope, or an increase in total approved PFC revenue for the project;

(6) A description of how each project meets the requirements of §158.17(b), for each project proposed for an increase of the PFC level above $3.00 at a medium or large hub airport;

(7) A signed statement certifying that the public agency has met the requirements of §158.19 if applicable, for any amendment proposing to increase the PFC level above $ 3.00 at a medium or large hub airport; and

(8) Any other information the Administrator may require.

(c) The Administrator will approve, partially approve or disapprove the amendment request and notify the public agency of the decision within 30 days of receipt of the request. If a PFC level of more than $3 is approved, the Administrator must find the project meets the conditions of §158.17 and §158.19 if applicable, before the public agency can implement the new PFC level.

(d) The public agency must notify the carriers of any change to the approved PFC resulting from an amendment. The effective date of any new PFC level must be no earlier than the first day of a month which is at least 30 days from the date the public agency notifies the carriers.

Issued in Washington, DC, on June 4, 2004.

Certified to be a True Copy

Dennis E. Roberts
Director, Office of Airport Planning and Programming